Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 11

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

No. 12

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

UNION TRUST CO. AND ILLINOIS STATE TRUST CO., AS TRUSTEES, ET AL.

No. 13

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

ISRAEL A. ABRAMS, ET AL.

No. 14

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

H. C. ORTON, ET AL., ETC.

No. 15

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

GUARANTY TRUST CO. OF NEW YORK, ET AL., ETC.

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No. 32

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vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, ET AL.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 875 - 883

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CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
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Debtor.

GROUP OF INSTITUTIONAL INVESTORS, AND
MUTUAL SAVINGS BANK GROUP,
Petitioners,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No.

IN THE MATTER OF

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Debtor.

GROUP OF INSTITUTIONAL INVESTORS, AND MUTUAL SAVINGS BANK GROUP,

Petitioners,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, ET AL.,

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For the Seventh Circuit

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310—UNION TRUST CO. and ILLINOIS STATE TRUST CO., as Trustees, et al., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

311—ISRAEL A. ABRAMS, et al., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

312—H. C. ORTON, et al., etc., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

313—GUARANTY TRUST CO. OF NEW YORK, et al., etc., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

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315—UNITED STATES TRUST CO. OF NEW YORK, as Trustee, etc., Appellant v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

316—TRUSTEES OF PRINCETON UNIVERSITY, et al., etc., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

317—E. STANLEY GLINES, et al., etc., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

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PRINTED RECORD.

IN THE

United States Circuit Court of Appeals

For the Seventh Circuit

In the Matter of CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC R. R. CO., Debtor.

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No. 13—GUARANTY TRUST CO. OF NEW YORK, et al., etc., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

No. 14—CHICAGO, TERRE HAUTE & SOUTHEASTERN RY. CO., Income Mortgage Bondholders' Committee, et al., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

No. 15—UNITED STATES TRUST CO. OF NEW YORK, as Trustee, etc., Appellant v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

No. 16—TRUSTEES OF PRINCETON UNIVERSITY, et al., etc., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

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1549 (Caption—60463)

September 5, 1940,
10:00 o'clock A. M.

Court convened pursuant to adjournment.

Present:

Same parties as before.

Mr. Nicodemus: May I call Mr. Severs for one or two questions?

The Court: Mr. Severs.

J. W. SEVERS, recalled as a witness on behalf of the Debtor, having been previously duly sworn, testified as follows:

Direct Examination by Mr. Nicodemus (Continued).

Q. Mr. Severs, in the Commission's plan the amount of the RFC loans is stated to be $12,920,463; but we note in your Debtor's Court Exhibit No. 8 the amount is stated to be $12,630,463. Will you explain the difference
1550 between those two figures, at least how that difference arises?

A. Well, I don't know that I can explain the difference, although I do know that the $12,630,463 that is shown on the Exhibit No.—

Q. No. 8?

A. No. 8 is in accordance with our book records.

Q. But there has been a payment on account due to some dividends or something of that kind?

A. So far there has been no payment on account due to dividends received and held by the trustee of the First and Refunding Mortgage, if that is what you have in mind, but the Commission's plan provides that the moneys held by the trustee of the First and Refunding Mortgage shall be applied toward the reduction of the RFC debt.

Q. Can you state what the amount of the RFC debt would be at the end of this year if all cash held by the trustee or which the trustee will receive during the calendar year were applied?

A. I haven't that figure in front of me, Mr. Nicodemus.

Q. Well, the check that we made the other day
1551 indicated that it would be $10,960,000. Would you adopt that figure?

A. It would be substantially that, yes, sir.

Mr. Nicodemus: That is all. Now, one of the other counsel wanted to examine him.

Cross-Examination by Mr. Whitlock.

Q. Mr. Severs, directing your attention to Exhibit No. 6, I believe you desired to supplement your statement in explanation of that exhibit. Will you do so, please?

A. Counsel asked me yesterday if it was not a fact that in line "E", items 1 and 2, if the expenditures for additions and betterments and initial payments on new equipment amounted to something like $36,800,000. He also directed my attention to the credits under "F", depreciation charges, road retirement charges and salvage from property retired of some $43,400,000, and asked if it was not a fact that the last named credits were in excess of the expenditures and additions and betterments and initial payments on new equipment to the extent of $7,000,000, to which I answered yes.

1552 I want to call attention in that connection to item 3 under "E" of "Principal Payments on Equipment Obligations," which amounts to $18,161,648, which the depreciation charges, retirement charges and salvage was used in part to retire that debt.

Mr. Whitlock: That is all.

Mr. Clay: I have one or two questions.

Cross-Examination by Mr. Clay.

Q. Mr. Severs, in referring to your Exhibit 8, I did not hear the figure that you said represented the cash on deposit with the First and Refunding Mortgage Trustee. Would you be good enough to read that again.

A. I don't believe I stated it, Mr. Clay, but I will.

There is on deposit at the present time approximately $1,500,000, and we expect that by the end of this year there will be about $1,640,000.

Q. That is according to your records. You have not verified that figure, have you, with the First Mortgage Trustee?

A. Well, we get monthly statements showing the
1553 amount that is on deposit with the First and Refunding Mortgage,—with the trustee of the First and Refunding Mortgage.

Q. Yes. Now, there is pledged with the trustee of the First and Refunding Mortgage certain bonds of the Terre Haute, viz.: $1,515,000 of the First and Refunding Bonds?

A. That is right.

Q. Also various other bonds of the Gary and the primary Debtor, the Milwaukee, I believe. Is that not true?

A. There is $2,700,000 of Gary bonds.

Q. In the figure which you gave, which you said you figure as of the end of the year will be perhaps $1,650,000, there is not included, is there, any interest on those pledged bonds?

A. Not on the bonds you mentioned; no, sir.

Q. In other words, no interest has been paid on the bonds of those issues which are pledged with the trustee of the First and Refunding Mortgage?

A. No, sir.

Q. There has been no interest paid since the bankruptcy; has there?

A. That is right.

1554 Q. So if that interest was paid up, the amount would be considerably larger than $1,650,000; would it not?

A. Well, I think I should explain that there has never been any interest paid on the $2,700,000 of Gary bonds that are owned by the Milwaukee Road.

Q. Well, of course, the interest would not be paid as long as the First and Refunding Mortgage bonds were not in default but they have been in default since a date which was approximately the same as the date of the bankruptcy of the Milwaukee. Now, there has been no interest paid since the bankruptcy of the Milwaukee; has there?

A. On any of the Gary bonds.

Q. Or on any of the Terre Haute bonds?

A. Yes. On all of the Terre Haute bonds except those bonds owned by the Milwaukee Road.

Q. You mean when you say "owned by the Milwaukee Road," the bonds which are pledged with the trustee of the First and Refunding Mortgage?

A. Yes; that is right.

Q. There is also pledged with the trustee of the First

and Refunding Mortgage certain Milwaukee and Northern bonds and perhaps other bonds of the primary Debtor
1555 in this case, the Milwaukee Road. There has been no interest paid on those bonds either, has there, since the date of the Milwaukee's bankruptcy?

A. There has been no interest paid on the Milwaukee and Northern bonds that are pledged with the First and Refunding Mortgage Trustee.

Q. That is true even though in some of the cases already mentioned interest has been paid on the bonds outstanding with the public?

A. In the hands of the public, yes, sir, partly,—part of it.

Q. Well, interest has been paid up to date, hasn't it, on the Terre Haute bonds outstanding with the public?

A. We have a continuing court authority to pay the interest on the Terre Haute bonds outstanding in the hands of the public.

Q. Exactly. Now, referring to your Exhibit 8, you show the amount of the RFC loans as $12,630,463. Of course, if the cash on deposit with the First and Refunding Mortgage Trustee were applied against that debt, as is provided in the I. C. C. plan, the RFC debt would be
1556 reduced to in the neighborhood of $11,000,000; would it not?

A. Yes. I think it is $10,960,000 or something like that. I don't just recall the exact figure.

Q. Well, is this figure that you have on Exhibit 8, viz., $12,630,463, a correct figure? I beg your pardon. I did not get your answer on that.

A. I believe it to be a correct figure; yes, sir.

Mr. Clay: I see. Thank you.

The Court: Any further questions? All right.

Mr. Nicodemus: I call Dr. J. H. Parmelee.

J. H. PARMELEE, called as a witness on behalf of the Debtor, being first duly sworn, testified as follows:

Direct Examination by Mr. Nicodemus.

Q. Dr. Parmelee, will you state your full name and your occupation?

A. My name is J. H. Parmelee. My residence is Washington, D. C.

The Court: How do you spell your last name?

A. P-a-r-m-e-l-e-e.

1557 At Washington I am the director of the Bureau of Railway Economics of the Association of American Railroads.

Mr. Nicodemus: Q. Will you describe the Bureau of Railway Economics?

A. The Bureau of Railway Economics was organized by the railroads in 1910 and is maintained and now is a part of the Association, which itself was organized in 1934. Its motto is: "Established and Maintained by the Railroads for the Scientific Study of Transportation Problems."

Q. Will you state how long you have been connected with the Bureau of Railway Economics?

A. After receiving my degree of Ph.D. in Economics at Yale University, I taught Economics in the university for three years, following which I went to Washington as a result of a Civil Service examination for Special Examiner with the Interstate Commerce Commission. I remained a member of the staff of the Interstate Commerce Commission for about two and a half years, following which I resigned and entered into certain other special work for the United States Government. My work
1558 with the Interstate Commerce Commission was that which would now be denominated the work or function of a Special Examiner with the Bureau of Accounts of that Commission, although at that time the Bureau had not yet been organized.

In the year 1911, shortly after the Bureau of Railway Economics was established, I became its statistician and served in that capacity until 1920, when I became its director and have remained as director to the present time.

Q. As such director is it your duty to keep in touch with the operations of all the Class 1 carriers?

A. Not only the Class 1 carriers but many of the smaller carriers and other forms of transportation as well.

Q. Do you study currently the reports that reflect their operations?

A. Yes. The reports of all the Class 1 carriers are filed each month, each week with the Bureau. Copies are filed with us. And we make certain regular routine tabulations and also publish from time to time our analyses of those returns.

1559 Q. Well, of course, included in the Class 1 roads is the Chicago, Milwaukee, St. Paul and Pacific Railroad Company; is it not?

A. Yes; and a very important part of the Class 1 group.

Q. And you have followed it closely for many years?

A. For a great many years; yes, sir.

Q. Have you made a study of the past, present and prospective earning power of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company; and have you reached a conclusion thereon?

A. I have made such a study, yes; and have reached certain conclusions.

Q. Will you present that study in your own way to the Court?

Mr. Smith: If the Court please, we think that any testimony given by Dr. Parmelee ought to be developed in the regular manner through questions and answers so that opportunity will be afforded to interpose appropriate objections if it appears that questions are not designed to elicit evidence that ought to be before the Court.

The Court: Why isn't that a good suggestion?

1560 Mr. Nicodemus: Dr. Parmelee has prepared a statement very carefully; and I could take it up paragraph by paragraph and develop the facts. I think it will be more useful to the Court if you hear it in narrative form.

The Court: Is it some sort of a printed statement he has here?

Mr. Nicodemus: No.

The Court: Or is he going to recite something?

Mr. Nicodemus: It is a typewritten statement.

The Court: There is not much difference between a typewritten statement and a printed statement; is there?

Mr. Nicodemus: No. He will present it in narrative form and be subject to cross-examination. I think it is the practice to present these studies in that form.

The Court: All right. Well, he may go ahead that way.

Mr. Nicodemus: You may proceed.

A. I would like to say first of all that I appear in this proceeding in response to a subpoena, and that in so appearing I am speaking only for myself as a trans-

1561 portation expert and I am not speaking in any way for the Bureau of Railway Economics of which I am director or for the Association of American Railroads, of which I am an officer. The views and conclusions I shall express are my own and I only am responsible for them.

Mr. Smith: Might we have a copy of this statement so that we could follow it a little better?

Mr. Nicodemus: Yes.

The Court: If he has it. That is the reason I asked if it was printed. He said, no, it was only typewritten.

Mr. Nicodemus: I will give him one.

The Court: Have they a copy?

Mr. Nicodemus: Yes.

The Court: Have you a copy down there?

Mr. Smith: Yes; we have a copy.

The Court: What about Colonel Clay there?

Mr. Clay: No, sir. I haven't a copy.

The Court: You better watch this one. You will get more out of it than I will. I will listen to Dr. Parmelee here.

A. In my study of the reorganization of the Chi-
1562 cago, Milwaukee, St. Paul and Pacific Railroad Company, to which I shall hereafter refer as the Milwaukee, my principal endeavor has been to arrive at an independent judgment as to the prospects of future traffic and earnings of the Milwaukee, based on its past record and on its more recent experience.

In presenting the results of my study, as I have already said, I speak only for myself. My conclusions are submitted in the belief that they are based on sound methods of analysis, which I shall explain in the course of my statement. They have been arrived at by applying the most conservative methods I could formulate, and I shall show later why, in my opinion, they err on the side of conservatism rather than otherwise.

In setting up a reorganized capital structure, the two principal elements involved are the value of the property of the company and its prospective earnings. The value serves as the outer limit of the capital structure to be set up. The earnings serve as a yardstick for both the amount
and the distribution of the different classes of se-
1563 curities within the capital structure.

The Court: Is there any disagreement over the use of those methods, so far as you know?

A. I have never heard any, your Honor.

The Court: You take the value and prospective earnings and from those two things you figure out certain conclusions?

A. Those two in my opinion are the principal elements. I do not see how they can be anything but the principal elements.

The Court: I did not mean to interrupt you but I wanted to find out.

A. Those groups who have formulated plans for a reorganization of the Milwaukee have emphasized the significance of the earning power of the company as one basis for such reorganization. This is true of the Debtor, of the group of Institutional Investors, and of the Interstate Commerce Commission itself.

At page 513 of the printed report of the Commission, dated February 12, 1940. (239 I. C. C. 485), the Commission said:

Mr. Smith: Now, if your Honor please, this is not any statement of fact from an expert witness. This
1564 is an argument he is going to read from the Commission's report. It follows in every respect the argument which Mr. Nicodemus will undertake to make later presumably. This is not the submission of any expert opinion on questions of fact.

Mr. Nicodemus: Well, the witness could not very well make a comment on a plan proposed without reading extracts from that plan. There is no other way of presenting the facts which he will bring out in the course of his statement.

The Court: He may proceed.

A. Quoting from the Commission:

"In determining the capitalization of the reorganized company, the (institutional) committee accorded predominant weight to the earning power of the system. The committee states, however, that the cost of reproduction of the property, less depreciation, as well as the original cost, should not be ignored in fixing the new capitalization, that those factors are important in determination of the rate base, and that account must be taken of the rate base
1565 in making any estimate of earnings."

That position is, of course, exactly the same, your Honor, as I have just taken a moment ago and as to which you made an inquiry of me, that you must take both the earning power and the value of the property into consideration.

The Commission's report, after stating that the Debtor's board of directors recognized that present stockholders have no equity on the basis of present earning power, but that the preferred stock at least has an equity on the basis of the value of the property, continued at page 524 as follows:

"It (the board of directors) further believes in the possibility that earnings will increase in the future to the extent that both the common and preferred stock would represent value."

The citations I have just submitted, together with the fact that the Commission's own findings on page 539 of its report were based in part on "past and prospective earnings," show the importance attached by all parties to this proceeding to the past, present and future earnings
1566 of the Milwaukee.

While the Commission followed a conservative policy in adjusting future fixed charges to a yardstick consisting of the lowest average earnings of the past, it is my opinion that it was unduly pessimistic about the possibility of greater earnings in the future, particularly in the year denominated by the Commission as "a future normal year" (page 515), to which I shall refer as "the prospective year." My testimony will be devoted largely to developing my reasons for this opinion.

Both the institutional committee and the Interstate Commerce Commission determined the amount to be set up as the annual fixed charges of the reorganized capital structure of the Milwaukee by adopting as the outside limit of such amount the annual average of two five-year periods of very low earnings, namely, 1931-35 and 1932-36. The method adopted in arriving at such a determination is described on pages 539-40 of the Commission's report. The average annual earnings for the period 1931-35 were $7,859,000, and for the period 1932-36 were $8,042,000. The Commis-
1567 sion limited its approval of fixed charges to $6,769,000, which includes the mandatory payment of $2,500,000 annually into the additions and betterment fund, and is more than a million dollars less than the smaller of the two annual averages. This smaller average the institutional committee considered to be (and I quote their own words) "a minimum for future years." What would be a fair annual average for the future, rather than a minimum, is a matter on which honest differences of opinion can easily develop. It is only too easy to adopt an unduly pessimistic view, as has been done in the plan of reorganization now before this Court. The Commission itself has recognized the difficulties involved in formulating plans for the future in the midst of a pronounced economic depression. In its annual report to Congress for 1938, at page 11, the Commission said:

"Since the beginning of the depression, the future earnings of the railroads have been so impossible to forecast that the preparation of just and reasonable plans of reorganization has been extremely difficult."

1568 In arriving at a reasonable forecast of earnings for the Milwaukee in the prospective year, I shall use two general avenues of approach:—

The Court: Pardon me. By the word "earnings" you mean net earnings, do you not?

A. Both gross and net earnings.

The Court: The figures you have given up to this time are net earnings, aren't they?

A. Those were net earnings, yes, your Honor. But I approach first the gross earnings. Then I come down from that to the net earnings, as I shall try to point out.

In arriving at a reasonable forecast of earnings for the Milwaukee in the prospective year, I shall use two general avenues of approach: first, the prospective level of traffic and earnings, as indicated by both long time and recent trends; second, the prospective level of operating expenses and taxes, also as indicated by more recent developments, and based on the probability of further progress in operating efficiency and economy.

First, then, as to the future level of total operating revenues, sometimes called gross earnings. Here we have

1569 two principal estimates, one by the Debtor and one by the Institutional Committee.

At hearings before the Commission in June, 1937, the debtor submitted its Exhibit 121, in which the results of operations were estimated for each year from 1937 to 1941, inclusive. According to this exhibit, the Debtor estimated in 1937 that the total operating revenues of the Milwaukee would be $126,900,000 in 1939, $134,000,000 in 1940, and $141,000,000 in 1941.

The Institutional Committee, at page 12 of its modified plan of January 24, 1938, estimated "eventual earnings for the future normal year" at $126,900,000, thus adopting the Debtor's estimate for 1939 as its general estimate for the prospective year. The Commission did not specifically approve this figure, although it was cited, along with other estimates of the committee, at page 515 of the Commission's report of February 12, 1940.

Thus we have estimates of gross earnings in the future, ranging from $126,900,000 up to $141,000,000, all made on

the basis of careful calculations by men familiar with
1570 the Milwaukee situation.

For the purposes of my own forecast, I have adopted an estimate of gross earnings in the prospective year only slightly higher than the lowest of the estimates I have cited. I will first describe how I arrive at my own estimate, and will later indicate my reasons for believing it to be conservative.

My estimate is based largely on recent and prospective trends in traffic and earnings on the Milwaukee. It is a significant fact that the Milwaukee, after dropping to a very low level of gross earnings in 1932, at the depth of the depression, has made an almost continuous recovery since that date. Except for a slight decline from 1936 to 1937, and a larger decline in 1938, when all industry suffered a reaction, the company has exhibited a generally upward trend, which is still under way. The revenues in 1936 reached a high point for the depression period, and have now risen above even that high point. Over the two-year period, from 1936 to 1938, the decline in Milwaukee
1571 gross revenue was less than that of the railway industry as a whole. Railways of Class I suffered a decrease of 12.0 per cent in gross between 1936 and 1938, while the corresponding decrease on the Milwaukee was only 8.9 per cent. As a net result of the generally rising trend since 1932, Milwaukee gross was greater in 1939 than in 1932 by 25.9 per cent, and is still higher today, as I shall point out in connection with my first exhibit.

This upward trend has been particularly strong in the past two years. Following the heavy depression experienced in 1938, the company showed a considerable increase in 1939 and a further increase in the first seven months of 1940, January to July, inclusive, the latest period for which statistics are now available.

Total operating revenues in 1939 showed an increase of 7.5 per cent over 1938, while for the first seven months of 1940 they showed a further increase of 8.2 per cent over the corresponding period of 1939. Taking the latest 12-month period, August 1, 1939, to July 31, 1940, the total operating revenues for that period were 7.9 per cent greater than those of the next preceding 12 months. 12.2 per
1572 cent greater than in 1938, and 31.4 per cent greater than in 1932.

The total operating revenues for this latest 12-month

period, ending July 31, 1940, together with other financial results for that period, are shown on an exhibit, which is herewith submitted as Debtor's Court Exhibit 13.

This Debtor's Court Exhibit No. 13, in the second column of figures, shows the latest year's operations of the Milwaukee Railroad.

According to Exhibit 13, total operating revenues in the latest 12-month period amounted to $111,539,000. By how much will this latest total be further increased, in the prospective year? The Commission in its report, at page 571, found no evidence to support a prediction that the company might show a recovery to the level of 1928 and 1929, regarding such a recovery (I quote from the Commission) "as a remote possibility only." However, the record contains considerable evidence to the effect that a part of such recovery is not only within the bounds of possibility, but is reasonably to be expected.

1573 The Court: What was the 1928 revenue?

A. The total operating revenues in 1928 were $170,555,000.

The Court: 170?

A. 170,000,000, yes, sir. And in 1929 were $171,361,000. Those were the two highest years, the two best years this railroad ever had.

I have just spoken of the fact that in my opinion, while a complete recovery back to the years 1928 and 1929 is very unlikely, a partial recovery is not only possible but very much to be expected.

Such a partial recovery is now under way. True, it is momentarily stimulated by war and threatened war conditions. That is only a temporary phase in our economic life, which will certainly be followed by a return to normal economic levels after the war. Such a return to normal will be of particular benefit to the Milwaukee, because of certain fundamental traffic factors which I regard as significant, and to which I will refer briefly.

The Milwaukee, with its 11,000 miles of operated trackage, in 14 states, serves an extensive territory. Based
1574 on Chicago, in the most populous section of the middle west, its rails reach into the heart of a great farming and livestock section, pass through some of the nation's greatest mining cents, and terminate in Seattle, amid the extensive lumber industries of the northwest. Large and important manufacturing interests are serviced by its lines.

The Milwaukee's freight traffic is not only diversified, it is well balanced. By this I mean that it is made up of well-balanced proportions of tonnage from basic sources. A railroad dependent for a large portion of its freight tonnage on a single industry, for example, may be badly crippled if the basic source of its revenue suffers business depression. Milwaukee freight revenue, on the other hand, has a definite measure of stability. In anything like normal times, unfavorable business conditions in a single, or even in several, basic industries will not curtail its traffic to a point where its earning power will be permanently affected.

The Milwaukee is, to a large degree, a self-contained unit in the country's transportation system.

1575 By this I mean that it is less dependent on traffic received from other roads for the tonnage which it hauls than the great majority of rail carriers. In 1939, for instance, the Milwaukee originated on its own lines 62 per cent of the tonnage which it carried, and terminated on its own lines over 65 per cent of the tonnage thus originated. It is therefore less liable to suffer severe traffic losses, through routing via other routes than its own. Of importance, too, is the fact that the Milwaukee has a longer average haul over its own tracks than does the average rail carrier.

These are some of the fundamental factors affecting Milwaukee freight traffic, which I consider of significance in any calculation of future earnings. They are favorable to that company, and when added up indicate that the Milwaukee may expect a return of revenues approaching those received in more normal times.

In my opinion, it is reasonable to expect that the company will, in the prospective year, recover one-half of the

1575 difference in freight revenue between present levels and those of 1926 and 1927.

And in view of your recent question about 1928 and 1929, your Honor, you may wish to know what the earnings were in 1926 and 1927.

Mr. Nicodemus: Will this help you?

A. Yes, thank you.

In 1926 the gross earnings were $160,538,000 and in 1927 $162,943,000.

The average annual freight revenue in those two years was less than the average of the peak years 1928 and 1929 by more than $10,000,000 and was less than the average of

the eight years 1923 to 1930. The amount derived in the way I have described is about $110,000,000—I am speaking now of freight revenue only.

The amount derived in the way I have described is about $110,000,000, which is less than that earned in 1930. Adding to this amount the present levels of passenger, mail, and express revenues, with some increase in switching and related revenue, the result is an annual operating revenue of $130,000,000, as compared with an average of $170,-
1577 000,000 in 1928 and 1929.

The Court: What year are you talking about now?

A. I am talking about the the prospective year.

The Court: What prospective year?

A. What the committee calls the future normal year.

The Court: I see that your figures here are up until July 31, 1940. That is practically half of this year.

A. Seven months.

The Court: And the total operating revenues there are $111,000,000 plus. Now you are adding on—

A. $19,000,000, in round figures 18½ million dollars.

The Court: That is made up of an increase in what?

A. Entirely made up of an increase in freight revenue, your Honor. I have assumed that there would be no increase in the future in passenger, mail and express revenue and I am going to—

The Court: What does that total out of the sum of $111,-000,000? What percentage of that is freight revenue?

Oh, I see you have it here. It would be close to
1578 $92,000,000.

A. Yes. I did not notice that that was on this sheet.

The Court: Yes; it is given here as $92,000,000.

A. Yes. It is shown here as $92,000,000, which is about 83 or 84 per cent.

The Court: And you expect the freight to increase to what?

A. I expect the freight to increase to $110,000,000.

The Court: In one year?

A. No. In the prospective year.

The Court: That would be a typical year of the future?

A. That would be a typical future normal year; yes, sir.

The Court: All right.

A. May I add right at that point, your Honor, that preliminary figures for August, 1940, came into my hands

yesterday; and that if this Exhibit No. 13 were taken and adjusted as to its revenue by dropping off the month of August in 1939 and adding the month of August, 1940, the total revenue for that 12-month period is increased from
\$111,539,000, as we have it on this statement, to
1579 \$112,300,000, or an increase of nearly \$1,000,000 by
merely adding that one additional month. And the estimate of the company for the calendar year 1940 is more than a million dollars greater than that figures, something more than \$113,000,000.

The Court: The estimate of the company is a million over that?

A. For the year, for the calendar year 1940.

The Court: Oh, for the calendar year?

A. For the calendar year 1940.

This figure of \$130,000,000 for the prospective year is slightly greater than the \$126,900,000 adopted by the institutional committee, but is smaller than the Debtor's own estimate for the years 1940 and 1941. It represents recovery, as between present levels and those of 1928 and 1929, of less than one-third in gross revenue.

The next step is to calculate the probable operating expenses and taxes of the Milwaukee in the prospective year, in which a total operating revenue of \$130,000,000 is expected to be earned. Such a calculation will lead to an
1580 estimate of the net railway operating income of the
prospective year. Here enters the question of recent trends in efficiency and economy of operation.

On that general subject, the record contains considerable evidence. The Commission in its report commented on the improved efficiency of Milwaukee operations as between 1928 and 1935. The Commission outlined the situation, at pages 505 and 506, as presented by the president of the company in his testimony, referring in particular to satisfactory results obtained with respect to the cost of repairs to freight cars, locomotive performance, the use of treated ties; the installation of tie plates, the method used for lengthening the life of rails, permanent improvements on bridges, and maintenance of track and bridges. Several locomotive shops have been discontinued. The number of operating divisions was reduced from 28 in 1927 to 15 in 1935. Savings were made in the cost of accounting.

The company's president testified in the 1935 hearing that

there was no deferred maintenance on the property requiring additional expenditures.

1581 At a subsequent hearing, in March, 1938, he testified that the condition of the roadway, structures, and equipment was excellent, and as good as at the beginning of the depression in 1930.

The institutional committee said, in its modified plan of January 24, 1938, at pages 5 and 6:

"The Committee believes that the present operating management of the Debtor has been efficient. The properties are in good condition, have little deferred maintenance and will require only normal expenditures for capital account."

The Reconstruction Finance Corporation issued a report in February, 1937, dealing with the Milwaukee. The conclusions of the report, as to operating efficiency may be briefly summarized as follows:

1. Physical condition of track and structures has been built up.—

Mr. Clay: Pardon me for interrupting but may I ask a question on the basis of a possible objection? Who is that report signed by? You do not say whose report it is. I am not sure that I know.

The Witness: The report dated February, 1937, has at its head, "Reconstruction Finance Corporation, Railway Division Report, Chicago, Milwaukee, St. Paul
1582 and Pacific Railway Company, February, 1937," and it is introduced by a letter addressed to the Chief Examiner of the Railroad Division, Mr. J. W. Barriger, the third, and signed by T. A. Hamilton, Examiner, Railroad Division.

Mr. Clay: You say that is an R. F. C. report?

The Witness: I said it was a report issued by the Reconstruction Finance Corporation, yes, sir.

Mr. Clay: Exactly. Do you happen to know whether that purports to represent the views of the corporation or just the views of a single employe?

The Witness: I cannot say about that, Mr. Clay.

The Court: This record indicates it represents the views of the man who signed it over there.

Mr. Clay: Exactly.

The Court: I do not think the doctor is contending anything else.

The Witness: I would like to re-read that language, your Honor, if I may.

"The Reconstruction Finance Corporation issued a report in February, 1937, dealing with the Milwaukee. The conclusions of the report, as to operating efficiency may be briefly summarized as follows:

1583 1. Physical condition of track and structures has been built up and much improved in the past decade, and is now adequate, not only for present, but also for a substantially increased traffic volume.

"2. Equipment condition, both locomotive and car, is good.

"3. Transportation is efficiently conducted. As compared with the Northwestern Region, excluding three iron ore carriers, the Milwaukee leads in heavier train loading and lower unit consumption of fuel, the two most important factors in achieving low ton-mile costs.

"4. The organization for, and the quality of management is good."

To obtain a comprehensive statistical survey of progress in operating efficiency—

Mr. Clay: Excuse me just a minute. Is that the end of the summarization of the conclusion?

The Witness: That is the end of the report of the Reconstruction Finance Corporation.

Mr. Clay: Now you are going to state your own views.

The Witness: I think I have no further reference to the R. F. C. or its report.

The Court: He just wanted to know if you had finished quoting from it. Is that your position, Mr. Clay?

Mr. Clay: Yes, your Honor.

1584 The Witness: To obtain a comprehensive statistical survey of progress in operating efficiency on the Milwaukee, and to bring previous testimony down to the latest date, I submit for the record an exhibit, Debtor's Court Exhibit 14, showing the extent of such progress from 1921 to 1939.

Exhibit 14 shows five factors of operating efficiency on the Milwaukee for each calendar year from 1921 to 1939, inclusive, as follows:

Gross ton-mile per train hour;
Net ton-mile per train hour;
Freight cars per train;
Average train load;
Average train speed.

The highly significant efficiency factor of gross ton-miles per train hour, a composite of both load and speed,

showed almost consistent improvement to 1939, in that year reaching the highest point on record. This is largely an operating factor, and nearly doubled between 1921 and 1939, going up from 15,331 gross ton miles per train hour in 1921 to 29,770 gross ton miles per train hour in 1939.

The freight efficiency factor of net ton-miles per train hour, which does not include the tare weight of
1585 freight cars, but only the weight of freight in the cars, is largely a freight handling factor. This factor also reached its highest point in 1939, showing an improvement of more than 75 per cent over 1921.

The average number of cars per freight train fluctuates to some extent with volume of freight traffic. Despite recent low levels of traffic, this factor has shown an almost steady upward trend. The average number of cars per train in 1921 was 36.7 and increased to 45.6 cars in 1939.

The average train load is also influenced to some degree by volume of freight traffic. The trainload averaged 732 tons in 1939, compared with 576 tons in 1921. The average for 1939 has been exceeded in only two previous years, 1928 and 1929.

Average freight train speed has shown an almost steady increase on the Milwaukee since 1923. Freight train speed is based upon the elapsed time of the train from originating to final terminal, including all delays enroute. It averaged 11.7 miles per hour in 1921, and 16.4 miles per hour in 1939, an increase of more than 40 per cent. The 1939 average was the highest ever recorded by the Milwaukee.

1586 While improvement occurred from 1921 to 1939, a considerable part of that improvement has taken place since 1934, or during the period of the trusteeship. For example, the following percentages of improvement were effected in the several factors, between 1934 and 1939:

Net ton-miles per train-hour 24.7%, or nearly one-quarter.

Average train load, 19.2, or almost one-fifth.

Gross ton-miles per train-hour, 19.1.

Freight cars per train, 7.3.

Average train speed, 4.5.

These figures, with their indication of progressive improvement in operating efficiency in the past, lead to a reasonable expectation that further future progress

will be attained, which will be reflected in increased net income for the company.

As to the equipment situation, the Milwaukee in 1934 reported that 4.9 per cent of the freight cars on its line were in unserviceable condition during that year, that is, were awaiting or undergoing repair. That percentage has been almost steadily reduced until it reached 2.6 per cent in 1939. These are unusually low per-
1587 centages. The corresponding average for the Northwestern Region in 1939 was 6.5 per cent compared with 2.6 per cent for the Milwaukee, and for the Western District it was 6.8 per cent.

The Milwaukee in 1934 reported that 38.1 per cent of its freight locomotives were in unserviceable condition. This percentage was reduced to 23.9 per cent in 1939, and was further reduced to 19.9 per cent in June, 1940, the latest month for which we have statistics at the present time. The corresponding average for 1939 in the Northwestern Region was 26.9 per cent, and in the Western District was 25.1 per cent.

The Milwaukee in 1934 reported that 33.5 per cent of its passenger locomotives were in unserviceable condition. This was reduced to 24.7 per cent in 1939, with a further reduction to 13.8 per cent in June, 1940. The corresponding average for 1939 for the Northwestern Region was 25.3 per cent, and for the Western District was 23.1 per cent.

These statistics indicate a satisfactory equipment situation on the Milwaukee at the present time, both by comparison with its own previous situation and the situation of other railroads in the West.

1588 Fuel consumption per unit in the freight service was reduced by 23.4 per cent from 1921 to 1939, and by 4.1 per cent from 1934 to 1939. The average consumption was the same in 1939 as in 1938, and represented the best record ever attained on the Milwaukee. This improvement was continued through the first six months of 1940.

The efficiency with which the Milwaukee is operating today has been strikingly emphasized by the translation of a large proportion of increased operating revenues into net income, to which I shall refer in a moment.

I turn now to the effect on net earnings of increased revenue, plus the progress in efficiency and economy I have outlined. It is an established principle of railway oper-

ation that a given percentage of increase in gross earnings is almost universally accompanied by a greater percentage of increase in net earnings. Stating the same principle in different language, additional increments of traffic are handled at progressively smaller costs per unit of traffic. It follows that of each dollar of revenue added to the dollars already being earned, a smaller proportion is absorbed by operating expenses and taxes,
1589 and a larger proportion is translated into net. A larger proportion of the added revenue goes through to net, and the operating ratio is correspondingly reduced.

This principle has been strikingly at work in the recent history of the Milwaukee. The study of that company by the Reconstruction Finance Corporation in 1937, to which I have referred—I am sorry I have no other reference to it—

Mr. Clay: That is the same report, is it?

The Witness: The same report, yes, sir.

The study of that company by the Reconstruction Finance Corporation in 1937, to which I have referred, pointed out what happened between 1935 and 1936, when there was a considerable increase in the gross earnings of the Milwaukee. According to the study, in the full year of 1936, as compared with 1935, gross revenue increased $16,695,000, 18 per cent, out of which was secured an increase in net available for interest of $4,815,000, or 80 per cent, although maintenance expenses increased $3,342,000 and the cost of compliance with the Social Security and Railroad Retirement Acts was $2,046,000 in 1936, as compared with a credit adjustment in this account
1590 of $746,000 in 1935. Quoting from the report:

"The demonstrated ability to convert increased gross, so substantially, into increased net, in spite of increased tax burdens, augurs well for the future."

The same principle has also been operative since the depression of 1938. The increase in revenue from 1938 to 1939 was $7,439,000, of which 38.3 per cent went through to net. During the first seven months of 1940, revenue increased $4,664,000 over the corresponding seven months of 1939, of which 70.6 per cent went through to net. During the twelve months ended July 31, 1940, revenue increased by $8,132,000 over the next preceding twelve-month period, of which 72.0 per cent went through to net. In the twelve months ended August 31, 1940, to which I referred a moment ago, that percentage was increased

still further to 74.3 per cent, which means just this, that out of every dollar of added revenue in that period it cost only 25.7 cents per dollar to do the business, and 74.3 cents of the dollar, or nearly three-quarters of the dollar, was translated into net income. Thus the ability of the company to translate increased gross into net has been growing steadily since 1935, in all periods when an
1591 increase in revenue has occurred. This in itself shows the effect, among other things, of progressive improvement in operating efficiency and economy.

The total operating revenue for the twelve months ended July 31, 1940, was $111,539,000, while my estimate for the prospective year is $130,000,000, an amount greater by $18,461,000 than the gross of the latest complete period of twelve months, 18½ million dollars. This anticipated increase over present levels is only slightly greater than was recently attained by the Milwaukee in a single year, 1936, when revenues showed an increase of $16,668,000. Assuming that 40 per cent of the anticipated increase of $18,461,000 will go through to net, which is very conservative when compared with the 72.0 per cent which has already been accomplished in 1940, the net railway operating income for the prospective year will be increased over that of the present year by $7,384,000. This amount, added to the $11,417,000 earned in the latest twelve-month period, will produce a total net railway operating income of approximately $18,800,000 in the prospective year. Adding to this sum the expected other net income of approximately
1592 $1,500,000, the total amount available for fixed charges in the prospective year will be $20,300,000.

At the beginning of my statement, I indicated my belief that my calculations, as to prospective earnings, are conservative.

First, as to operating revenues for the prospective year: My estimate compares with the estimate of the institutional committee, and with average actual returns of the predepression periods, as follows:

My estimate	$130,000,000
Committee estimate	126,900,000.

And, as I already pointed out, the committee apparently took that figure from the Debtor's own exhibit, 121, and that sum was their estimate for the year 1939. It was not an estimate for the prospective year.

The Court: The estimate for the year 1939 was what?

The Witness: $126,900,000.

The Court: What did they actually make?

The Witness: They actually made $106,875,000.

The Court: That is 20 million dollars out of line.

The Witness: That is right. Remember that that estimate was made in 1937, prior to the depression in 1938, however. That depression came in and upset all future 1593 calculations.

The actual average gross earnings of this company for the ten years ended 1930 was $160,409,000, and my estimate is more than $30,000,000 less than that actual average of the past.

Thus my estimate of operating revenues is less than 2½ per cent greater than the estimate of the Committee, and nearly one-fifth less than the operating revenues of the company for the average of the ten years ended 1930.

The Court: Did the Interstate Commerce Commission make any estimate of the earnings?

The Witness: No, they did not, your Honor. As I stated a moment ago, they cite this $126,900,000 of the institutional committee, and they used certain other figures from the committee report but they did not specifically adopt that figure.

The Court: Your estimate is what?

The Witness: My estimate is $130,000,000, which is $3,100,000 greater than the committee's estimate, or about 2½ per cent.

In view of the prospective traffic situation I have outlined in some detail, the estimate of operating revenues for the prospective year that I have adopted is, in my 1594 opinion, a reasonable one.

Second, as to the prospective net railway operating income of $18,800,000, calculated on the basis that out of each dollar of increased operating revenue, operating expenses and taxes will absorb 60 cents of that dollar and 40 cents will go through to net. This takes into account the fact that in years of more favorable traffic and revenue, the proportion of revenue carried through to net is relatively greater.

What has been the recent experience of the company in respect to its ability to translate increased gross into increased net?

Operating revenues in 1939 were greater than in 1938 by $7,439,000, while net operating income was greater by

$2,850,000. Thus, for every dollar of increased gross in 1939, 38.3 cents went through to net.

The number of gross revenue dollars earned during the first seven months of 1940 were greater than for the corresponding period of 1939 by $4,664,000.

For each dollar of increased gross, during this period, operating expenses and taxes absorbed only 29 cents, while 71 cents went through to net.

1595 For the latest twelve-month period, the year ended July 31, 1940, the company only spent 28 cents for each dollar of increased gross, and carried 72 cents through to net.

Thus it seems reasonable to assume that in the future, when gross totals $130,000,000 per year, the company under its present efficient management should translate not less than 40 cents out of each dollar of gross into net. If, as I believe will be the case, the company makes still further progress in efficiency and economy of operation, this 40 cents will undoubtedly be increased, and the net income will be correspondingly greater than my present estimate.

For the prospective year, according to my estimate, the total operating ratio would approximate 74 per cent. That is the ratio of operating expenses to operating revenues as stated on a percentage basis, 74 per cent for the prospective year. This compares with an actual operating ratio of 77.8 per cent for the year ended July 31, 1940, and an operating ratio of 81.7 per cent for the year ended July 31, 1939, as shown by my Exhibit 13.

1596 With an increase of about 8 per cent in operating revenues during the past year, the company reduced its operating ratio from 81.7 to 77.8 per cent, a reduction of nearly 4 points. It is therefore reasonable to assume that with a greater relative increase in operating revenues, as between present levels and the prospective year, the operating ratio can be reduced by at least another 4 points, or, from something less than 78 per cent, which it is now, to my estimate of about 74 per cent.

It is quite probable that more than 40 per cent of the increased gross can and will be carried through to net. I believe that any increase in the 40 per cent ratio will help to offset an increase in income tax, and other possible tax increases.

Summarizing my statement, I believe that the total operating revenues of the Milwaukee in the prospective year may be conservatively estimated at $130,000,000. I further

believe that such an increase will be accompanied by an increase to $20,300,000 in income available for fixed charges. This is based, as I have already emphasized, on a conservative series of estimates. Such a net income, $20,300,000, may be compared with the $15,894,000 estimated
1597 by the institutional committee. It is about two-thirds as great a net as was earned by the company in the years 1928 and 1929, and is greater than the net earned in 1930 by about $1,250,000.

In the light of the facts I have presented, and in view of the further fact that the elements of value in the property of the Milwaukee, as outlined in the Commission's report, are more than a hundred millions in excess of the reorganized capital structure proposed by the Commission in its report, it is my considered opinion that the net earnings I have forecast should leave some equity for both the existing preferred and common stock of that company.

Mr. Osborn: Q. Is that all, Doctor?

A. That concludes my statement.

Q. Doctor, I would like to ask you some questions on the determination of the average minimum earnings on which the Commission based its fixed charge provisions. You will find that under "Capital Structure" in the Commission report of February 2, 1940, where the minimum fixed charges available for interest on funded debt were fixed at $4,269,064. Have you got that?

A. Yes.

1598 Q. After these fixed charges, the Commission said it would be a sounder course to pursue to add to those bond charges the mandatory sum for additions and betterments of 2½ million dollars. So the addition of those two means that the fixed charges which the Commission set up for this road to bear year after year in fixed interest on debt plus this additions and betterments fund comes to a total of $6,769,064, is that correct?

A. Yes, that is correct.

Q. The Committee based that figure by taking two average earnings periods, that is the period from 1931 to 1935, and the period from 1932 to 1936. Have you the earnings that were provided for those two periods?

A. Yes, the Commission gave the earnings for the period of 1931 to 1935 as $8,059,000, and for the period of 1932 to 1936, $8,042,000, those being annual averages in each case.

Q. Well, now, during those years of 1931 to 1936, inclusive, what amounts did the Milwaukee Road recover from

salvage and road retirement charges? Have you got those figures?

A. Yes, they are here in the Debtor's brief of May 31, 1938, at page 24. The two columns to which you refer
1599 I think are headed, "Road Retirement Charges", that is charges to operating expenses, and "Salvage."

Q. Will you explain what those recoveries are, Doctor?

A. The Road Retirement Charges under the accounting regulations of the Interstate Commerce Commission are arrived at in this way: When property other than equipment is retired and not replaced the total original cost of that property is charged to the retirement account in the operating expenses, except that if there is any salvage involved that, of course, goes into cash if the property is sold, or to the materials and supplies account if salvaged as a physical matter and re-used in some other form. So the retirements of property not replaced are a charge to operating expenses. The salvage, of course, I have just described. It is the amount each year recovered from property which is retired, destroyed, or otherwise removed from active service, and is a recovery credit which may be used by the corporation in any way that it sees fit.

Q. Doctor, are these recoveries recurrent in the annual operations of a great railroad system like the Milwaukee?

1600 A. Oh yes, they go on year after year and the retirement charges to which I have referred eventually get into the cash account. Being charged through your operating expenses and not being used for any other purposes, they become an addition to cash on hand.

Q. Would these amounts ordinarily be applicable to the payment of amounts extended on additions and betterments?

A. They are at the disposal of the Board of Directors to be used in any proper, appropriate, legal, corporate way.

Q. Well, then, if you were fixing average minimum years of earnings in order to provide a margin for your bond fixed charges and your minimum additions and betterments fund of 2½ million dollars, would you think it proper to add those recoveries to the average earnings for those periods?

A. I think those two items certainly should be taken into account and should be added to your earnings if you are going to offset it on the other side by putting in a mandatory charge for additions and betterments, that is the $2,500,000.

Neither of those two transactions is, of course, strictly
1601 an accounting transaction. You cannot charge a capital item to your income account as an operating income matter, nor can you add to your earnings as purely an accounting matter these recoveries from road retirements and salvage.

Q. But do you when you are making a calculation of this sort?

A. In making such a calculation in connection with the capital account I think it is not only proper to add to your earnings these recoveries you are speaking of but I think it should be done.

Q. You are aware that the recoveries are not sufficient to take care of these items of expense of this road?

A. Yes.

Q. And they might be sufficient during the minimum years such as the Commission refers to in fixing these averages.

The Court: I do not think I quite understand that. One thing, I don't follow this item that you call retirement income cash account.

The Witness: The amount is charged off to your operating expenses.

The Court: What do you mean by retiring? They retire what?

1602 The Witness: Let us assume there is a bridge which is retired and not replaced but simply abandoned. The original cost of that bridge, which is still in your road and equipment account, let us say was $25,000. Now, you retire that bridge.

The Court: You abandon it.

The Witness: In the year 1939 you retire that bridge. You write that $25,000 out of your assets account. It disappears from the asset side of your balance sheet. That is your balance sheet charge. You charge the $25,000 to your operating expenses in an account which, under the classification of the I. C. C., is called, "Retirement of Road Property, Abandoned but not Replaced." That whole $25,000 is charged to that account, excepting where there may be some credit to salvage, to which I have referred. Now, after charging it to your operating expense it becomes a part of your cash account because you haven't actually spent the cash. It is merely a book transaction, so when it turns up next in your balance sheet it is a reduction of $25,000 in

assets, in your road and equipment account, and an increase of $25,000 in your cash.

The Court: It does not mean anything, does it?

The Witness: It does not mean anything so far as
1603 being on the balance sheet is concerned, but it means a great deal in the fact that the company now has $25,000 of free cash to spend. That is the point I think Mr. Osborn is bringing out.

The Court: $25,000 of cash to spend?

The Witness: To spend in any way that the Board of Directors wishes to spend it. It is extremely important in that connection. As a bookkeeping transaction it washes out but as putting cash into the hands of the Board of Directors, it is a very different proposition.

The Court: Where do you get the cash?

The Witness: You have charged that $25,000 to your operating expenses.

The Court: You took it out of your cash, didn't you?

The Witness: You do not take it out of anything exactly but you have taken the money in as revenue. You charged the $25,000 to your expenses but you haven't actually spent it.

The Court: I do not see how you have taken it in as revenue. Here is something that is worn out. How are you going to produce $25,000 in cash?

The Witness: I am afraid I have not made myself clear. I did not mean that bridge earned anything.

1604 The Court: Well, was it worth something?

The Witness: It was on your books as $25,000.

The Court: Yes, and now it is retired. Now, somewhere by a method of bookkeeping you are going to produce the cost of that bridge and use it.

The Witness: The Interstate Commerce Commission requires you to charge that out through your operating expense account so you charge that $25,000 to operating expenses. Now, you have had operating revenues from some other source to cover that $25,000.

The Court: That is what I am getting at. You take $25,000 from some other source and put it into this little place represented by the value of that bridge. Now, you are going to use that again.

The Witness: Yes, in any way you want to.

The Court: Well, outside of the theory of the Interstate Commerce Commission bookkeeping system, as a mat-

ter of fact, that railroad has retired a bridge which originally cost them $25,000.

The Witness: Yes.

The Court: That is the net result of all of this?

The Witness: Yes.

Mr. Osborn: Your Honor, the earnings have been reduced $25,000 by this charge off of this bridge.

1605 The Court: I do not care what you call it. A $25,000 loss has been sustained there somewhere.

Mr. Osborn: On your property account, but if you are figuring up earnings on which to pay out additions and betterments, that money can be taken into account, and my point is that if the Commission is setting up an average and taking the three worst years they could pick and charging that average with those additions and betterments, with that fund, it would be fair and sound and conservative to have credited these recurrent recoveries to the cash account of this road. It has nothing to do with the actual operations of the property. It merely shows how they made up their estimates. I think it is merely over conservative.

Q. Doctor, if you were making up averages upon which to base fixed charges for the St. Paul Road and a 2½ million dollar mandatory fund for additions and betterments, would you put the year 1932 into any such average picture?

A. No, I do not think I would. I think it was so subnormal and so extraordinarily depressed a year, not only for the Milwaukee but all railroads, that it should be left out of any average over a period of years.

Q. Referring to the fixed charges set up by the

1606 Commission as applicable to the mortgage debt of $4,269,544, and relating that fixed charge to the outstanding fixed charge against this property as June 30, 1935 of $14,458,250, do you think that sound and conservative methods would provide that the fixed charge be cut from $14,000,000 to $4,000,000, or would you think it would be fair and equitable and reasonable and also conservative to have a larger fixed charge set off against this property?

A. I think a reduction from over $14,000,000 to $4,000,000, or more than a two-thirds reduction, is treating the creditors pretty roughly. It is a little difficult to make an expression of opinion as to whether a certain thing is fair and equitable but it is certainly stiff treatment of the bondholders.

Q. Would you think it is sound and conservative to have those fixed charges applicable to bond interest, creditors of the St. Paul, increased from $4,000,000 to $7,000,000 annually?

A. I think in the light of the fact that in these five very depressed years we have been speaking of, the net earnings of the company averaged nearly $8,000,000 a year, I think you could go safely very close to $7,000,000 on fixed charges annually.

1607 Mr. Osborn: Your Honor, in our objections and in our brief we suggested that we might file as an exhibit in this court an outline of a proposed capitalization for the Milwaukee which might be illustrative of the point made in our objections in our brief. I would like to file such an exhibit with your Honor and I would like to examine this witness on it.

Mr. Clay: I object, if the Court please.

Mr. Smith: If the Court please, counsel has been careful not to designate this as a plan of reorganization. He calls it a proposed capital setup. Of course, obviously, it is another plan of reorganization that the gentleman wishes to file, and that must be filed with the Commission. It is entirely out of place here and we object to it.

The Court: The objection is sustained.

Mr. Osborn: Your Honor, may I present my reasons for offering this piece of paper?

The Court: Yes. From what you have said so far it looks like something that should be presented to the Interstate Commerce Commission. However, you may present your reasons and make your record and we will still sustain the objection.

1608 Mr. Osborn: Will your Honor examine the paper?

The Court: Well, it is set up according to your theory of the way this thing should work out. Now, to me that means a plan of reorganization.

Mr. Osborn: Well, we do not provide in this proposed capital setup any apportionment of securities, we do not set out any terms of securities, we do not set out any provisions for who shall control this property. We merely wish to illustrate in a graphic way the points we make in our objections and in our brief.

The Court: I think you have made them pretty well through this witness.

Mr. Osborn: The points I would like to illustrate, we do not regard this as anything except a schedule that we

hoped might be of help to your Honor. Your Honor must pass on and be satisfied with the fairness and acceptableness of the plan proposed by the Commission. Of course, we do not care to offer any counter-plan but we think it would be instructive to indicate a capital setup in line with our objections and our brief which would illustrate graphically what we mean.

Mr. Clay: May I call the Court's attention to the fact that Judge Hinnecks in the New York, New Haven & 1609 Hartford Railroad reorganization case held that the judicial question in a hearing of this sort was whether or not Commission's plan as certified to the Court should be approved by the Court. It is a matter of no constitutional significance that Congress had limited the hearing in that respect since bankruptcy is a purely statutory proceeding. I think that case can be found in the 17th Federal Supplement. I would be glad to supply the citation after recess.

Mr. Osborn: Well, I do not think that decision has anything to do with what we are suggesting. We are only offering this to be of assistance to this Court in trying to crystallize what we have in mind. It is not in any sense a plan.

The Court: I think I understand what you have in mind. I think I understand what you and your associate have in mind when you started this proceeding. You folks wanted a trial de novo here. I have told you two or three times you are not going to have it.

Mr. Osborn: Well, that is not my position.

The Court: That was your announced position at the beginning of these proceedings. Now, it appears that you are trying to do something through the back door that you were not allowed to do through the front door. The 1610 objection is sustained. Proceed. Ask another question.

Mr. Osborn: Well, without offering it in evidence I would like to show it to the witness.

The Court: You may have it marked and you may offer it in evidence so that it will be in the record.

Mr. Osborn: I offer this, then, as Debtor's Exhibit 15.

Mr. Smith: If your Honor please, in order that the record may show how the debtor characterized this exhibit in its brief, I would like to read a portion from that document.

"One or more methods of dealing with the equity repre-

sented by the Debtor's common and preferred stock may be developed in detail and a complete substitute plan proposed if adequate opportunity denied by the Interstate Commerce Commission (we think wrongfully) was afforded the Debtor to prepare and submit it and support it by evidence."

Mr. Osborn: Well, your Honor, in answer to that we received a copy of Mr. Burgess' very able brief in which he expressed surprise that we would present a plan and we have no idea of presenting a plan. If that state-
1611 ment was made in the brief, we withdraw it.

The Court: You have made the offer of the exhibit and Mr. Clay and Mr. Smith objected to it and their objections are sustained.

Mr. Osborn: Q. Will you state if you took the interest on the date of the filing of the petition as accrued June 30, 1935, will you state what interest would be paid and allowable to creditors in this proceeding if that date were fixed?

Mr. Smith: Your Honor, I submit that arithmetic is not a proper subject for expert testimony, and I think that is what this is.

The Court: I think he may answer that question.

The Witness: Your question, as I understand it, is as to what appears in the column headed Interest upon July 1, 1935 to December 31, 1940?

Mr. Osborn: Yes.

The Witness: I think in this exhibit it is $36,403,053.

Mr. Smith: I move to strike on the ground that the witness is reading from a document which has been excluded from the evidence.

The Court: There isn't any dispute about that figure, is there, that represents an amount of interest that
1612 was due and payable on a certain security, is that right?

The Witness: I think so. This is not my exhibit.

Mr. Osborn: Well, of course we think the effective date of this plan operates back to the date of the filing of the petition and we wish in this paper to show how much interest would be divided among these bondholders as earned during the five-year period and not as accrued.

The Court: There cannot be any dispute over that figure, can there?

Mr Osborn: I just want that figure introduced into the record.

Mr. Nicodemus: I think it is covered by Mr. Severs' testimony.

The Court: Ask another question.

1613 Mr. Osborn: It represents this: That if there was any accrued interest piled up on the debt during this proceeding and only the interest earned was allowed and then apportioned among the various lines in proportion to their liens, it amounts to $36,000,000.

Mr. Nicodemus: Up to the date of filing the petition?

Mr. Osborn: No, up to December 31, 1940.

Mr. Nicodemus: On all mortgages?

Mr. Osborn: It is rather difficult to do this without this chart.

The Court: I don't think it is difficult; it is mentioned in your brief. I thought all these lawyers knew that figure.

The Court: Somebody in his brief set out that exact figure.

Mr. Osborn: Your Honor, I withdraw that question and will indicate it from the exhibits that were introduced yesterday, I can bring it to the attention of the Court from that.

The Court: All right.

Mr. Osborn: Q. Dr. Parmelee, as an expert in railroad matters and railroad reorganizations, what

1614 would you consider a safe limit of first mortgage bonds to be placed upon this property?

A. Safe in relation to the value of the property?

Q. Safe in relation to the value of the property.

Mr. Harry Hoffman: If your Honor please, I object to the question on the ground the witness has not been qualified as an expert in reorganization matters. He has only been qualified as an expert on economic matters, affecting the railroads.

The Court: The objection is overruled.

Mr. Osborn: Q. Will you answer my question, as to what would be a sound and conservative first mortgage bond issue to place on this railroad, in your opinion?

A. In comparison to the value of the property?

Q. In comparison to the value of the property as from the elements of value by the Commission.

A. I would say that it is rather difficult to set either a maximum or minimum ratio that would be applicable to all cases at all times. However, I take a rather conservative view myself, and I am expressing my own opin-

ion when I say that I think that the ratio of the funded debt to the value should not be over 60 per cent and should be made as low as 50 per cent if possible. The more it can be reduced below 50 per cent, the better. Now, that is merely a generalization which, of course, has to
1615 be worked down in either case to the proper elements of that case.

The Court: Your testimony, I take it, means that the mortgage on this road should not exceed 60, and if it was close to 50 it would be that much better.

A. That much better, yes, your Honor.

Mr. Osborn: Q. Dr. Parmelee, would you state what in your opinion would be a fair coupon rate for first mortgage bonds of this property in line with present markets for capital securities?

The Court: Coupon rate means interest rate.

Mr. Osborn: Interest rate, yes.

The Court: Let us call it interest. We understand that word out here a little bit better.

A. There, again, a number of factors have to be taken into account. The amount of the mortgage, the total outstanding amount is, of course, a factor; the total amount of the fixed charge in relation to the earnings is another factor, and so on, but I would say that if the fixed charges can be held well within the average minimum earnings to which we have referred, those of 1931 to 1935, that the rate should not be over three and one-half per cent. They might be made as low as three per cent.

Mr. Osborn: Q. Are you familiar, Dr. Parmelee,
1616 with the elements of value filed by the Interstate Commerce Commission in this hearing?

A. Familiar, not in a detailed sense, but I know what has been filed and know what those items are.

Q. Would you state what the value was as filed by the Commission?

A. You mean the amount in dollars?

Q. The amount in dollars.

A. The Commission said in its report of February 12, 1940—I have the Commission print, your Honor—at page 493, that for the two roads combined, that is, the Milwaukee and the Terre Haute, the cost of reproduction new, less depreciation, plus value of lands and rights and the working capital fixed by the Commission as of December 31, 1935, was $653,007,696.

Q. You are generally familiar with these proceedings and the report of the Commission, Dr. Parmelee?

A. Yes.

Q. Was there any other valuation filed by the Commission in these proceedings?

A. Not that I know of. May I say that that was not a valuation. You referred to it as valuation. It was simply a report by the Bureau of Valuation of the Commission.

Q. It was a report of value.

1617 A. Of the Commission, reporting as to certain elements of value for the Milwaukee and the Terre Haute.

Q. Applying your ratio of between 50 and 60 per cent of valuation, being the outer limit of valuation, to that valuation, how much debt do you think this property in principal amount could bear?

A. Why, a 60 per cent ratio would give you around $400,000,000 on the basis of $653,000,000 elements of value, if you assumed that that is a value, a valuation. 50 per cent, of course, would give you about $325,000,000, and figures in between that would give you figures between $325,000,000 and $400,000,000 of funded debt.

Q. Would, in your opinion, that be a sound and conservative debt for the Milwaukee?

A. Well, by that what do you mean? Which of these limits?

Q. Would you regard this property as overburdened with debt if it had a debt of between $300,000,000 and $400,000,000?

A. I would like to see it reduced below $400,000,000.

Q. If that debt were divided between fixed interest debt and income debt, how much fixed interest debt do you think that division should have?

A. That is really a matter of working back to the figures we were speaking of a minute ago. If you

1618 assume $700,000,000 as the outside figure every year for fixed charges and a three and one-half per cent interest rate, that would give you about $200,000,000 of fixed interest debt, the balance to be contingent interest obligations.

Mr. Osborn: I have no more questions. That is all we have to present. That rests our case, your Honor.

The Court: Well, I think we ought to take a recess now and give the doctor a chance to catch his breath. Suppose you come back at 2:00 o'clock.

Now, there will be a full session here tomorrow, but there will be no hearing Saturday, so you can make your plans accordingly. We will work all day tomorrow, but no session Saturday.

(Whereupon an adjournment was taken to 2:00 o'clock P. M., September 5, 1940.)

1619 In the Matter of
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Debtor.

September 5, 1940,
2:00 o'clock P. M.

Court reconvened pursuant to recess.

Present: Same parties as before.

J. H. PARMELEE, resumed:

Direct Examination (Continued) by Mr. Osborn.

Q. Doctor Parmelee, have you any corrections to make to the testimony that you gave this morning, or explanation?

A. Yes. Through a slip of the tongue in speaking of the property retired and the charges to operating expenses for property retired I used the phrase "property retired and not replaced." That should have been, that phrase should have been "property retired and replaced."

The Court: Well, that makes sense.

1620 A. Sir?

The Court: That makes sense to me that way. I did not understand it the other way.

A. Yes. The result is,—I may say that property retired and not replaced is charged out through profit and loss. Now, this bridge we spoke of this morning, which had an original cost of $25,000, if retired and replaced, the cost of the retirement is charged to operating expense. The cost of the replacement, the cost of the new bridge, of course, is a capital cost, capital account. And the point that was being made this morning and which I was discussing is

that the retirement of that bridge and the charging out of the original cost of the bridge through operating expense placed at the disposal of the board of directors that sum of money, $25,000 in this particular case, towards the cost of the new bridge, and to that extent helps to pay, helps to meet the cost of the new improvement.

1621 *Cross-Examination by Mr. Smith.*

Q. The difference is, Doctor, adverting to your illustration on the bridge abandoned and not replaced that you were telling the Court about, you would not have this $25,000 against operating expenses at all?

A. That is true. That would be charged out through profit and loss.

Mr. Smith: Yes.

The Court: Pardon me just a minute. Did you finish, Mr. Osborn?

Mr. Osborn: I finished.

The Court: All right.

Mr. Smith: Q. Have you read the record in this case, Doctor?

A. The complete record before the Commission?

Q. Yes.

A. No, sir.

Q. Have you read enough of the record to know that contrary to what you said about this item that we have just been talking about, your client, the Debtor, took the position throughout this proceeding that the Debtor needed not only the full additions and betterments fund pre-
1622 scribed by the Commission but needed also any amounts properly charged to operating expenses from retirements and all accruals from salvage in order properly to maintain the property in the public interest; do you know that?

A. No, sir, I did not know that, but that would not affect the point we were discussing this morning.

Q. Well, I thought you said this morning that you thought if you could eke out another $25,000, using your bridge for an illustration, it might be available as income.

A. The point I was trying to make in answer to a question was this: That in the past there have been charges by this company, even during the rather low earnings years 1931 to 1935, of almost exactly $2,500,000 per year. I think

it is fair to state that in better years, such as we are discussing for the future, those charges would be greater, probably greater than $2,500,000 per year and that for that reason the Commission in setting up the charge, the mandatory charge of $2,500,000 as a part of the fixed charges might well have taken account at the same time of
1623 this corresponding credit of that much or more.

Q. Well, you are not reversing the position of the Debtor here, I take it, that the Debtor does need any accruals of that kind and all of its full A and B Fund in order to meet this public obligation?

A. That has nothing to do with the total of capital that it might need in the future in any particular year, no.

Q. Did you appear before the Interstate Commerce Commission during the five-year period that this case was before the Commission?

A. You mean in this particular proceeding?

Q. Yes.

A. No, sir.

Q. You were in Washington during that entire period; were you not?

A. Yes.

Q. You did appear in many other proceedings before the Interstate Commerce Commission during that period; did you not?

A. Yes; a number of general rate cases.

Q. Well, that reminds me that you answered a question this morning which you were asked to answer as an
1624 expert in railroad and reorganization proceedings.

Do you qualify as a competent expert in railroad reorganization matters, in your opinion?

A. Well, that is an embarrassing question to ask, or, rather, to answer.

I may state during the past year I have been called into three different reorganization proceedings. In the New Haven case last year I was retained by the Pennsylvania Railroad with the full consent of the Debtor in that case, the New Haven Railroad, and testified before the Commission in the reorganization proceedings regarding that company. And earlier this year I was called into the reorganization proceedings of the North Western Railroad before a District Court, and have been called into this case.

Q. Are those the three that you have been consulted in?

A. Yes, in which I have been called on specifically to

make statistical studies, although, of course, I have made my own personal studies of a great many other reorganization cases.

Q. In the New Haven you appeared for the Penn-
1625 sylvania prior to the issuance of a plan by the Commission?

A. The plan was before the Commission at that time. It was a plan which had been proposed by the Examiner but had not been finally approved by the Commission.

Q. In the North Western and the Milwaukee the plan had been certified by the Commission?

A. Yes, and was before the respective court.

Q. So in both instances where you have been called on in reorganization matters where a plan has been certified you have been able to produce an estimate higher than you say was adopted by the Commission?

A. In both cases I reached the conclusion as conservatively as I could make it that the Commission was unduly pessimistic in its forecast of the future.

Q. I think the adjective that you used in the North Western proceeding was that the estimate made by the Interstate Commerce Commission there was ridiculous. Is my memory correct in that?

A. I don't think I used the word "ridiculous." I think I did say that I thought it was extraordinary that they reached such a conclusion.

1626 Q. Well, you said their estimate was a ridiculous one or ridiculously low, on page 1369, but we won't stop for that. Is it your opinion that this estimate which you say the Commission made here is equally unsound?

A. Let us get the record straight, Mr. Smith. I was careful to say this morning that so far as I could ascertain from the record the Commission had not made any estimate whatever; that they only cited, whether with approval or without does not appear from the record, the estimate which was made by the Institutional Committee.

Q. I was going to turn to that next. The Commission has done something that you don't approve of here; is that so?

A. No. I don't think I would go with you on that. I don't think—

Q. Are you here to support the plan?

A. I don't think the Commission has made any estimate.

Q. Has the Commission made any finding or proposal

here, which, if you do not think it is ridiculous, you think it is unsound?

1627 A. I would say that judging from my own study of the matter that this amount which the Institutional Committee used or arrived at of $15,894,000 is unduly conservative. If the Commission adopted that I would say that same thing of the Commission's estimate.

Q. You don't know whether the Commission did or not?

A. I can't understand—I don't understand that they did.

Q. You referred this morning to the words "normal future year" or something of that sort.

A. That was the phrase used by the Commission, "future normal year."

Q. I hand you the printed record in this proceeding and ask you if you will point to that language, please. I think you may find what you intended to refer to on that page before you.

The Court: What is the page?

Mr. Smith: The page is 6944. That may not be the page.

Q. Is it, Doctor?

A. The draft I have been using is the Commission's

1628 own report, which I cited this morning as 239 I. C. C. 485. And on page 515 of that report the Commission uses that phrase or uses the equivalent of that phrase in two places in a paragraph, dealing with the net earnings. One sentence reads: "For a future normal year the Committee adjusted the Debtor's forecast for 1939, arriving at total gross revenues of $126,900,000 and an income of $15,894,000," and so forth. And later they said: "If from the assumed future normal income be deducted," and so forth. So that that phrase "future normal year" appears twice in that paragraph.

Q. Will you look before you put aside that document and tell us whether that appears in the Commission's report under the caption "Intervenors' Views and Contentions"?

A. Would you show me where that appears? I have that section. I will be glad to identify it.

Q. Well, where do you find that phrase?

A. Is the phrase that you want to bring out?

Q. Appearing in the part of the report from which you

just read the Commission is summarizing the conten-
1629 tions of the parties and the evidence preliminarily to stating its conclusions; is it not?

A. Yes.

Q. And in its conclusions I will ask you, first, if the Commission did not say this, and then ask you if you can find any other statement to which you object here that the Commission made with reference to its findings in this case. I am reading from the bottom of page 6958 of the record.

"Considering the past and prospective earnings of the Debtor and all other relevant facts and the public interest, we are of the opinion and find that the total capitalization of the new company should not exceed approximately $108,780,470 of fixed interest debt; $115,257,480 of contingent interest debt; $108,675,971 par value of preferred stock and 2,158,194 shares of common stock having no par value. Taking the common stock at $100 a share, the approximate maximum capitalization should thus be $548,533,321."

A. Now, what is your question, please?

Q. My question is this: First, what is it in that state-
ment which represents the finding of the Commission
1630 with reference to this subject concerning which you have offered testimony this morning you disagree with.

A. Well, I assume the words "concerning the past and prospective earnings" are the words to which you refer.

Q. You think they should have done that?

A. Should have done what?

Q. Considered the past and future earnings?

A. Yes. I certainly do, and I assume that they did.

Q. Well, what is it in that statement that covers the only finding which I have been able to find that the Commission makes upon this subject that you don't like, that you take issue with?

A. I did not know that I had taken issue with any finding of the Commission with respect to any particular figure of earnings, of prospective earnings, I mean.

Q. You are here to testify in support of an objection to this plan; are you not?

A. It looks as though the Commission was rather pessimistic in its view, but I can't refer you to any one figure
which the Commission used except in so far as they
1631 quoted the estimate of the Institutional Committee.

Q. They referred in this report to all the testi-

mony of record in summary fashion in the preliminary portion of the report; didn't they?

A. Yes, and that is the only figure that they specifically cite, so far as I can recall.

Q. So there isn't any portion of this specific finding of the Commission which produces a capitalization on the basis of $100 a share for no par stock of $548,500,000 which you disagree with?

A. That is rather a hard question to answer, Mr. Smith.

Mr. Smith: Well, if you don't want to answer it, we will pass it.

A. You take—there are two things involved in any—in the development of a plan of reorganization. One is the prospective earnings. Then the other is how those prospective earnings shall be distributed among the several groups of security holders. That opens a very large field of discussion and consideration.

Q. Well, that is your complete answer to that question, isn't it?

1632 A. I think so.

Q. This $20,300,000 figure that you produce capitalized at 4 per cent would produce a capitalization about $50,000,000 less than the capitalization referred to here by the Commission and at five per cent about $150,000,000 less than that stated by the Commission; isn't that so?

A. Yes. At 4 per cent it would produce a little over $500,000,000 and at 5 per cent it would produce a little less than $400,000,000.

Q. Is that the reason why you don't want to be any more specific in criticizing this finding of the Commission?

A. I am not here testifying specifically on the Commission's plan. I was asked to produce my best estimate and forecast of the future prospective earnings of this company, which I have done.

Q. You say that that as you understood was not directed to this plan. Did you understand that it was to be directed at the substitute plan that the Debtor referred to in its brief?

A. No; it is not directed to any plan. It was a study, an independent study of the future earnings of the
1633 company so far as any future can be forecast at this time.

Q. Now, not having read the record this may be a difficult question for you, Dr. Parmalee, but I would be glad if

you will tell me if you can whether you are asking the Court to reach a different conclusion from the conclusion reached by the Commission on the same record, on the same facts, or whether you are purporting to offer here new facts upon which the Court ought to reach a different conclusion from that reached by the Commission.

A. You spoke of me a few moments ago, Mr. Smith, as a client of the Debtor?

Q. No, I spoke of the Debtor as being your client.

A. Oh, the Debtor as being my client? I think that is an incorrect statement. I have been brought here under a subpoena for one purpose and one purpose alone, and that is to produce an estimate and forecast of the future earnings of this company; and I think that will be my answer to your question.

Q. I understood that you were under subpoena but this document that you produced was not prepared by you in response to the subpoena, was it? It was not a sub-
1634 poena duces tecum, was it, Doctor?

A. I am afraid I don't know what that kind of a subpoena is.

Mr. Osborn: What document are you talking about?

A. That I was subpoenaed here to produce—

Mr. Smith: I am talking about the exhibits and manuscript that he prepared and offered here. I am asking if that was in response to any subpoena.

A. As I understood it, I was to produce any information that I might have or views that I might have and I have tried to produce them.

Q. Well, I don't want to labor that point, but is it the answer to my question that you are unable to tell the Court whether it is your suggestion that he differ with the Commission on the same evidence or on different evidence?

A. Well, I assume that any evidence that is produced before the Court is new evidence.

Q. Don't you know or do you know that the testimony that you have offered here so far as it relates to facts and figures as distinguished from opinion was in this record before the Commission?

A. No; I would not think that because—

1635 Q. Do you know—

A. May I finish my answer, please?

Q. I would like you to tell us whether you know whether they are in the record or not.

A. My answer would be that I know that they are not in the record to some extent because of the fact that I have brought my figures down to the middle of August 1940 and at the time that record was made up, which I think closed in June, 1937, those figures could not have been in the record. In other words, this is the latest study of this kind that could have been made under the circumstances.

Q. Well, let us examine that for a moment. The Commission refers in a supplemental report to the earnings of the first two months of this property for the year 1940. You are saying now that the new evidence that you have offered covers the succeeding five months of 1940; is that it?

A. So far as the earnings are concerned and certain other things, yes.

Q. Well, do you have those other things in mind that you want to speak about at the moment?

A. Yes. I produced them this morning. Certain
1636 of these efficiency factors which I brought down through the first six months of 1940, and certain other things.

Q. I see. And in reading that portion of the record, if any, which you read, did you find that the Debtor had offered most elaborate testimony showing an increase in those factors of efficiency of the type that you have offered here?

A. Yes.

Q. Did you know that in substantial effect they were exactly what you have shown here?

A. Yes, that is true, but my effort was and I think that my figures showed that that improvement in efficiency and economy has progressed; it has been a progressive thing right down to the present day.

Q. I see. There was one point in your testimony that you stress somewhat that I thought might be a little confusing possibly to the Court, where you were talking about the earnings which the Commission had used in establishing the fixed charges, and you spoke about them having taken minimum earnings or something very near to minimum earnings. You want to make it clear, do you not,
1637 that in that discussion you were addressing yourself strictly to fixed charges and not to capitalization?

A. Yes. I hope I did not misstate the thing It was not my intention to.

Q. You did not misstate it but you put a good deal of emphasis on it and I wasn't sure that it was clear.

A. That they took those minimum earnings as their outside limit for the fixed charges in the proposed reorganization.

Q. And then they allowed a large amount of income bonds and preferred stock and common stock?

A. Well, there was a contingent interest outside of that, of course.

Q. You do have in mind that the Commission is strictly adjured by the Act to fix the charges on a basis which will be adequately covered by future earnings; you have that in mind?

A. Yes.

Q. You stated in your testimony that you attach a great deal of weight, if I am not misquoting you, to existing
1638 trends of earnings; is that right, Doctor?

A. Yes, if by the word "existing" you think of a period broad enough to cover the whole period from 1932 down to date. I was careful, if you recall, to start with 1932 as my beginning year. In other words, my conception of the word "existing" is a rather broad conception.

Q. The reason that you referred this morning, as I understood you, to the statements which the Commission made in summarizing the testimony of various parties before they reach a statement of their own conclusions, was that you felt that the Commission may have attached some weight to some of those estimates that you referred to; is that right?

A. No. That was not the exact idea. I wanted to point out that other parties, in fact all the parties to the proceeding had emphasized and had laid a great deal of weight, given a great deal of weight to this factor of earnings.

Q. But you do not want to stress the point that possibly the Commission gave any consideration to that?

A. Well, now, consideration to what?

1639 Q. To those estimates made by these other parties that the Commission referred to and that you referred to this morning.

A. Oh, I assume the Commission considered all of them.

Q. You referred to them on the ground that the Commission may have attached weight to them; is that the point?

A. Yes. I assume that they considered and gave weight to all the estimates they had before them.

Q. Now, one of the exhibits that you referred to before the Commission by number was 121; isn't that so?

A. Yes.

Q. And in that exhibit, which was offered by the Debtor, was it not?

A. Yes, it was offered by the president of the Debtor if I remember rightly.

Q. The earnings for 1938 were estimated, if you refer to line 31, Dr. Parmalee, for the year 1938 the estimated earnings were $12,866,000; "Income Available for Fixed Charges?"

A. $12,866,000?

1640 Q. Yes.

A. Yes.

Q. Now, the Debtor actually earned in the year 1938 $6,101,866 for fixed charges, didn't it?

A. $6,102,000; is that the figure you read?

Q. Yes.

A. Yes; that is correct.

Q. So I see the actual earnings for the year 1938 were less than one-half of the estimate of earnings that was made the previous year.

A. Yes.

Q. Is that right?

A. That is correct.

Q. And the estimate of earnings for 1939, which this exhibit shows, is $15,696,000; is that not right?

A. That is correct.

Q. And the actual earnings compared with that 15½ million were $9,455,000; is that right?

A. That is right.

Q. They did a little better than half there then?

A. Yes.

Q. Now, the estimated earnings for this year of
1641 1940 in this exhibit were $17,477,000; is that not right?

A. Yes.

Q. And you testified this morning that taking the year ending with August of this year the actual earnings for 1940 would be something like $12,000,000; is that right?

A. That I think was the net operating income, if I remember rightly.

Q. Well, what is the income available for fixed charges then on the basis of your exhibit of this morning for the period ending with July 31, 1940?

A. It would be greater than that by about $1,300,000.
Q. Roughly what?
A. Between 13 and 14 million dollars.
Q. As against this 17½ million?
A. That is just for the period ending July 31, 1940.
Q. I understand.
A. And the estimate of the Debtor at this time for the calendar year 1940 is something over $14,000,000.
Q. Well, it is about $14,000,000, isn't it?
1642 A. Yes. I think it is a little over. So that they are rapidly approaching their estimates.
Q. So, Doctor, it appears, does it not, if the Commission gave weight to those estimates, as you think that they did, we find now that the actual earnings are much less than the estimate that was before the Commission; isn't that so?
A. You are speaking now of just this year or two?
Q. I am speaking about—
A. 1938 and 1939?
Q. I am speaking, if you please, about all of the years—
A. Yes.
Q. —covered by Exhibit 121 that you referred to this morning, namely, the years 1937—
A. Yes.
Q. —to 1940, inclusive. Not 1941. Is that right?
A. Yes.
Q. Well, now, in talking about these trends in earnings and the weight that you think should attach to these trends in earnings, you are rather making virtue of necessity, aren't you, in the light of the fact that the earnings as they have actually developed are so radically lower
1643 than the estimates that were put before the Commission?
A. Oh, I don't think so at all. You have to consider that the year 1938 was another of these subnormal years that may come along at any time. That does not affect, however, the long-time trend over a period of years. And any one of us making an estimate of the future about almost anything in 1938, if we had made such an estimate in 1937, would have gone wrong. Now, it takes some time to come back out of a depressed period of that kind. We are now on the way back. That is all. That is simply a temporary dip to which too much emphasis should not be given.
Q. Well, this property had reason to think that it was

on the way out in some of these earlier years since 1932, didn't it?

A. There has been since 1932, as I tried to point out this morning, a very marked general upward tendency, with the two dips which I referred to this morning, 1937 and 1938. If you make due allowance for the sub-normal character of the earnings, the traffic and earnings in 1938

I think that the upward trend in that period is rather
1644 a remarkable one.

Q. Well, in summary, you take comfort in an upward trend that is desperately lower than the one that was anticipated when this exhibit was put in the record; that is so, isn't it?

A. I don't know how to answer that question, really.

Mr. Smith: Well, if you don't want to answer it, why I will pass it.

Q. How many of these sub-normal years of the character that have operated to defeat this estimate that the Commission refers to do you anticipate will be experienced before we come to this $20,000,000 year that you talked about this morning?

A. Oh, that is a very hard question to answer, of course. 1932 was an unusually sub-normal year. 1938 was another, not quite so bad. They were six years apart. We may have them ten years apart or fifteen years apart in the future. We don't know.

Q. You don't want to make a guess as to when the $20,000,000 year will come in reality; do you?

A. I think I would not make any forecast on that.
1645 The present upward trend would indicate that it is not so very far away but perhaps it would not be safe to forecast it.

Q. You made an estimate of gross revenue and then you made an estimate of operating expenses and by means of those two things you arrived at this $20,300,000; is that right?

A. Yes; in effect I estimated what the operating expenses and taxes would be, that would be caused by the added revenue.

Q. And the basic premise upon which you proceeded to determine those expenses was that as gross revenues go up it costs less to handle the added traffic and consequently the operating ratio goes down?

A. Yes.

Q. It went down so much in your judgment that for the

added traffic that you anticipated would be received between now and this future year that you felt that 40 per cent of the net,—of the gross, I should say,—would go to the net?

A. Yes; and I think that is a very conservative estimate.

1646 Q. That is the way I understood you.

A. Yes.

Q. I believe you said on page 15 of the written manuscript this morning that it is "universally recognized". I believe you used those terms.

A. I think I used the words "established principle." Let us get those words straight.

Q. All right. Look at page 15 and see if you don't say "universally accepted" or something of that sort.

A. This is the exact phrase which I think you will find in the record: "It is an established principle of railway operation that a given percentage of increase in gross earnings is almost universally accompanied by a greater percentage of increase in net earnings."

Q. I see. "Universally accompanied?"

A. "It is almost universally accompanied," yes.

Q. Well, now, you say that is because the facilities are used less for the added traffic, the additional facilities are used less and consequently the operating ratio goes down?

A. Well, they are a great many factors involved

1647 which I think are quite generally recognized.

Q. Well, the operating ratio goes down?

A. Yes.

Q. That is what I am asking you.

A. Yes.

Q. And because the operating ratio goes down on the added traffic, then the overall operating ratio for the property goes down?

A. Exactly.

Q. Now, what is operating ratio, so that we won't have any misunderstanding about that?

A. That is the ratio between operating expenses and operating revenues stated on a percentage basis.

Q. And if operating ratio would be so happily affected by this added traffic as between what the company has now and what it would have in that future year, that the operating ratio would go down from what it actually is now to 74, I think you said?

A. Yes, about 74 per cent.

Q. What is it now?

A. In this last 12-month period that I am speaking about it was 77.8 per cent.

Q. You told the Court this morning I think in
1648 answer to one of his questions that 1929 was the best year that this road ever had.

A. I said 1928 and 1929 were the best years.

Q. They made more money in 1929 than in 1928, didn't they, or did they?

A. By "more money" you mean gross or net?

Q. Net.

A. 1929 had about a million dollars more of gross than 1928 and the income available for fixed charges was about a million and a half dollars less. So you can take your choice.

Q. That is, they had more money in 1929 and more gross, you said?

A. A little,—about $800,000 more gross in '29 and about a million and a half less,—

Q. Of course, that is inconsistent with your theory right there, isn't it?

A. Oh, no, not at all.

Q. No?

A. That is income available for fixed charges. That is an entirely different thing from net railway operating income.

Q. Now, do you happen to know what the operating ratio of the property was in this year 1929?

1649 A. 75.16 per cent.

Q. It was a little more in that year than you think it is going to be in this $20,000,000 year that you talk about?

A. Yes, and I think that this company is being operated today on a much more efficient basis than it was in 1929.

Q. Has anything else happened to the railroads and to this railroad besides a change in the operating efficiency, if it has had a change, that affects operating ratio?

A. Well, you are opening up quite a large field. I suppose you mean wages, prices, rates and a lot of other things?

Q. Yes; I had some of those in mind.

A. Yes; a great many things have happened.

Q. Well, you mentioned some that affected one side of the equation but not those that affected the other side, didn't you?

A. I didn't go back to 1928 and 1929 for the basis of anything that I considered at the present time. I tried to keep my future estimates as nearly as possible based upon present conditions.

Q. You said that you thought that the property 1650 ought to go back half way the distance between the present and 1926 and 1927; did you not?

A. Yes.

Q. In other words, you thought that while it would not go back to the point of getting all the tonnage and the gross revenue it had before, it would go half way back?

A. Not necessarily the tonnage, but the revenue. I was speaking of freight revenue at that time.

Q. Do you have in mind what the operating ratios were in these years 1926 and 1927 to which you are going back half way?

A. My statement that I have here does not go back of 1928, unfortunately. I am afraid I can't answer your question.

Q. Well, the operating ratios for those years, for the purpose of my question, Doctor, were 80 in 1926 and 81.9 in 1927.

A. And today 77 per cent.

Q. Now, you are going back half way toward those years. You admit you are going to have a higher operating ratio than they had in those years and you account for this reduction in operating ratio by an increase in 1651 traffic. Now, how do you explain that one?

A. You mean a lower operating ratio than they had in those years?

Q. Yes.

A. You said "higher."

Q. Thank you.

A. I am measuring, Mr. Smith, from today and today's conditions as a basis. I am not paying any attention so far as that particular phase is concerned as to how they were operating in 1926 and 1927 or 1928 or 1929.

Q. In other words, you would rather not apply the test of reality to this hypothesis of yours, that as traffic increases operating ratio goes down?

A. You can't apply conditions of fifteen or twenty years ago to present-day circumstances, no.

Q. Well, you are using 1926 and 1927 as the basis to which you are going to approach half way, you say?

A. Yes, but that is a different proposition entirely.

Q. Now, let me ask you this question first: Broadly speaking, the traffic of the railroads of the United
1652 States has increased for forty years, hasn't it, up until this last decline in 1932; broadly speaking there has been an increase in the volume of rail transportation?

A. Yes. You are speaking of freight or passenger? Let us get the record straight.

Q. I am talking about freight.

A. Yes, as to freight there was a general increase up to the year 1929.

Q. That was so as to passenger up until the middle twenties, wasn't it?

A. No. I think the year 1920, that was the peak year.

Q. So that taking one five-years period with another from 1890, not to go back too far, there has been an increase in tonnage and gross revenue of the railroads, speaking broadly?

A. Generally speaking, yes; of course, with the usual ups and downs.

Q. Now, as a student of railroad economics, you know too, do you not, that parallel with that fact is the fact that over that long range the amount available for fixed charges has been steadily declining?

A. I wouldn't say steadily declining, no, but.—

1653 Q. Well, I am trying to discuss the matter broadly with you.

A. Yes.

Q. And by "steadily" I mean taking one five-year period with the next.

A. You mean over this period from 1890 down to date?

Q. Over those forty years.

A. Well, I don't agree with that statement at all. If you want to go into that I would have to fresh my memory.

Q. All right. I am going to let you refresh your recollection.

A. All right, going back over quite a period of years.

Q. Well, you have been a student of this problem for many years, haven't you?

A. Yes.

Q. And you appeared in the 15 per cent cases, as I recall it?

A. Yes.

Q. And you offered a great deal of statistical testimony there?

A. Yes.

1654 Q. That was the case in which you told the Commission that calamitous conditions had struck the railroads because of many new competitive factors and what not and that they ought to increase the rates; wasn't it?

A. We were seeking an increase in rates at that time.

Q. You did not get what you sought, did you?

A. Not entirely, no.

Q. Well, you got a small part of what you sought, didn't you?

A. A part of it and only for a temporary period.

Q. Now, calling your attention to page 59 of the Commission's decision in that volume, 226, I will ask you to look at the table that is shown there, wherein, you see that the Commission has taken the operating ratio and adjusted it, so to speak, by including taxes and rents and then has compared over that long period of years the amounts that the railroads have had left after paying those expenses.

A. Yes.

Q. You find that table?

A. Yes.

1655 Q. Isn't it true that that table shows that there has been a decline over that period of thirty-five or forty years, whatever is shown there, in the amount available for fixed charges?

A. No. I would say it was distinctly not true, based on this table.

Q. All right. What do you say about it?

A. All right. In the year—

Q. Will you read the table, first, please, and then comment on it, so that the Court will have it before him?

A. You are speaking, as I understand it, of this net operating income?

Mr. Smith: I would like the witness to read the table so the Court will have it before him.

A. This is shown by five-year steps, your Honor, in this Interstate Commerce Commission report, 1900, 1905, 1910, 1915, 1920, 1925 and 1930. Now, the amount of net, which is given in millions, is as follows:

In 1900 it was 481; in 1905 it was 633, an increase of about $150,000,000.

In 1910 it had gone up further to 805, which was
1656 another increase of about $170,000,000.

In 1915 it dropped off to 683 and in 1920 it dropped

off to $17,000,000. That was, of course, the year of Federal control. In 1925 it came back to $1,121,000,000, which was greater than in any previous year; and in 1929, which was the peak, four years later, it had gone up still further to $1,252,000,000, with a drop in 1930 to $869,000,000.

I would say that over that period, taking into consideration the ups and downs, there was a rather general upward trend in net up to 1929 and 1930.

Q. Well, if you have any compunction about reading to the Court what I asked you to read, I will read it to the Court and then you may comment on it.

A. All right.

Mr. Smith: I am reading from page 58.

Mr. Osborn: Whose statement is this, to get the matter clear?

Mr. Smith: I beg your pardon?

Mr. Osborn: Whose statement is this that you are reading from?

1657 Mr. Smith: I am reading from an official report of the Interstate Commerce Commission, in 226 I. C. C. 59.

Mr. Osborn: Thank you.

Mr. Smith: The caption is: Narrowing of Spread Between Operating Revenues and Costs.

"Concluding from the foregoing facts that the present lack of financial credit of the railroads as a whole cannot justly be attributed to an unsound capital structure, applicants contend that it is due to such a narrowing of the spread between operating expenses, including taxes, and gross revenues, as to leave an insufficient margin of safety represented by net railway operating income. This spread determines the proportion of the operating revenue which is available for payment of fixed charges and other deductions after taxes. It is equivalent to the difference between 100 and the operating ratio broadened to include taxes and equipment and joint-facility rents. For individual railroads or particular years this spread is not a safe

1658 test of adequacy of earnings, since in times of depression the operating ratio may be kept down by severe curtailment of maintenance, but significantly the spread has been lessening over a long period of years as shown below."

And then they show this table. They show the operating revenues which Dr. Parmelee has read, and then they show

the percent of operating revenues that is available to take care of this margin to take care of the investors. And for the year 1900 it is 32.4; 1905, 30.4; 1910, 28.6; 1915, 23.8; 1920, zero; 1925, 18.3; 1929, 19.9; 1930, 16.5; 1932, 10.4; 1936, 16.5, and 1937, 9.6.

I will ask to have this copied into the record so any discrepancy will be corrected.

Q. So, Dr. Parmelee, this study shows, does it not—and let me ask you this first: This testimony as to the narrowing of the spread between operating revenues plus taxes and rents, the narrowing of the spread between that and total gross revenues, that testimony was all put into this record by the Association of American Railroads, which you also represented there, did you not?

1659 A. I am not sure whether that particular, those particular statements were put in. The Association did put in a good many statistical statements.

Q. You know that Fairman Dick offered the basis for this statement, don't you?

A. It may be. I have forgotten it.

Q. And that shows that from the year 1940, when the railroads were able to save $32 out of every $100 to take care of returns to capital, it dwindled down through those years, through the 25 per cent and the 20 per cent and the 15, down in the neighborhood of 10 per cent; isn't that so?

A. So far as that spread is concerned, yes.

Q. But all that time the tonnage of the railroads or the added tonnage, as you please to think of it, was increasing; isn't that so?

A. Up to 1929, in a general sense, yes.

Q. So the thing in practice just worked exactly in reverse from the way you testified this morning; didn't it?

A. No, I don't think that I would reach that conclusion.

1660 Q. Well, now, let us take a couple of more instances and attempt to inject some reality into this theory of yours by taking a situation as between 1934 and 1935 on this railroad. In 1934 the gross revenue was $87,860,000 and in 1935 it had arisen to $92,474,000. There is an increase of something like $5,000,000. What percentage of that increase in gross was carried into the net?

A. There was a decrease in the net operating income in that two-year period.

Q. What is that?

A. There was a decrease in net operating income in that two-year period between 1934 and 1935.

Q. So that $5,000,000 more gross revenue, instead of that added traffic producing earnings that could be carried in a greater percentage into gross, the next year, 1935, when they actually had this higher gross they had less net, didn't they?

A. Yes.

Q. Instead of more?

A. Yes.

Q. So it did not work there.

A. There are, of course, years that it does not work and there is always an excellent reason why it does
1661 not work.

Q. I will give you a chance to explain that later.

A. All right.

Q. Let us take a little earlier year.

A. Why don't you go on from 1935 to 1936 after the wage increase had been made and was in effect?

Q. Well, now, you had an opportunity to present this the way you wanted to, I think, and now I am asking you questions about it.

A. All right. I beg your pardon.

Q. Calling your attention to Debtor's brief in this case, I will ask you, by looking at page 10 thereof, what the gross revenues were for the year 1911.

A. $81,876,000.

Q. How much is that less, approximately, than this year 1940, to July 31st?

A. (No response.)

Q. Well, it is $111,539,000 from your exhibit, isn't it?

A. Yes, $30,000,000 in round figures.

Q. So, testing this theory of yours over the long period, we find that the revenues increased between 1911 and 1940 by about $29,000,000, didn't they?

A. Yes, $29,000,000 or $30,000,000.

1662 Q. Yes. Now, if you had been applying this theory in 1911 and you saw that by 1940 you were going to have this increase in gross which has eventuated of about $29,000,000 and then applied your operating ratio of 60, saving about 40 per cent of that, you would have had gross revenues in 1940 of $44,000,000, approximately, would you not?

A. You would, yes, but I cannot conceive anyone in

1911 making estimates for 1940 any more than I would make estimates now for the year 1969.

Q. Well, you do not disparage the point that if this test of yours which you say shows that gross revenues are universally accompanied by declining operating ratios, you do not deny that if you had applied that in 1911,—you have estimated for the year 1940 about $44,000,000, whereas you actually had about $11,600,000. isn't that so?

A. The chances are that if I had been doing that in 1911 I would not have selected a 60 per cent ratio, although I am not in position to say what would have happened then because in 1911 there were factors in the picture that are not in there now. In other words, any estimate must be made in the light of the conditions as they exist at the time the estimate is made.

1663 Q. Well, if you had applied any such theory as you told the Court about this morning, however wise it might have been, you would have come out with earnings about four times what they actually were, is that so?

A. If I had applied an estimate of ratio which I thought was reasonable at that time it might have been 75 per cent or more or less. I say it is purely hypothetical as to what might have happened.

Q. Well, now, I wish you would tell the Court why it is that did not work out. You start with these 1911 revenues and you say, well, here is all this added traffic and, of course, it is universally accepted that added traffic can be handled at a lower operating ratio, so there are earnings in 1940 of $45,000,000 instead of $11,000,000. Why didn't they hold good during that period?

A. I think I have answered that question when I pointed out that you cannot make estimates and forecasts thirty or forty years ahead with the possibilities of a war coming in in the meantime, which actually happened, and a number of other things happened.

Q. Well, I understand you do not want to answer that question, Doctor. Let us take the period of 1926 and 1927. Maybe you will not think that is too far back.

1664 You select those years as the basis for your estimate. There you have more traffic than you have in your prospective year and you had a higher operating ratio. Now, what has happened to prevent this theory of yours from working out?

A. You have had this very great and rather surprising

increase in efficiency and economy of operation. That has been unusually the case of this railroad in comparison with other railroads.

Q. I understood you on that before, but that is not what I am asking you now.

A. That is one of the reasons why, looking at the conditions today and looking at the future, I am entitled to take that increased efficiency into account and by that token reduce my ratio of expenses and taxes to the increased revenues. All those things become effective in your conversation.

Q. Well, Doctor, inasmuch as you are proposing that by adding to your traffic you are going to reduce your operating ratio, I think you ought to tell us how you can reduce it to a point lower than it was in 1926 and 1927 when you tell us you only expect to go back half way toward the traffic condition that year. What is the reason of that?

1665 A. The reason is this very large and very impressive improvement in efficiency and economy, the end of which has not been reached. Even during the first six months of this year it has been going on.

Q. Well, in every case the efficiency which you have brought to the attention of the Court is one which you say the property has experienced now and yet that operating ratio is higher than the one you proposed to go to.

A. No, I did not mean to say quite that. If I said that, that is not exactly what I mean. The past few years show the full fruition of these efficiency and economy developments. I say that I do not think they have reached their full fruition and that there is a progressive movement going on, the full effect of which has not yet been felt. I tried to make that clear this morning but perhaps I did not do so.

Q. Well, I will not labor with that any longer, but as far as there has been improvement in operating efficiency it is reflected in the present statistics of the company which you referred to this morning.

A. Yes.

Q. And that produces an operating ratio of 78 or so.

A. Yes, a little less than that.

1666 Q. And in order to get that down you are assuming they are going to be more and more efficient.

A. No, I would not say that. I would say that even

if the efficiency does not rise above what it is today, we will get that 60 per cent, perhaps even reduce it below 60 per cent, and get the 40 per cent up. But, the reason I believe my estimate to be conservative is because I do foresee, I think, as a reasonable man looking ahead, a further increase in this efficiency and a further reduction of the operating ratio, but that is an element I left rather open. I did not make any estimate of it, I simply pointed out that it was an added possibility.

Q. In the interest of being conservative you do not attempt to state that?

A. Exactly.

Q. Why do you propose to go back only half way toward the conditions of 1926 and 1927?

A. I think that the railroads should not expect, so far as we can see now, to return to the peak period of 1925, 1926, 1927, 1928 and 1929 as to freight traffic.

Q. Why? What has happened?

A. Competition.

1667 Q. What kind?

A. Competition from waterways and from highways, so that in looking at the future there is no use of expecting that we will get back to those levels. The Commission said it was remotely possible that we might get back to 1928 and 1929.

Q. Yes; you read that this morning.

A. Yes, and I agree with that statement. So I think we can have a partial recovery, as pointed out this morning, but not a complete recovery to that point.

Q. And one of the factors you mentioned as preventing that complete recovery was the truck competition?

A. Yes, and the water competition.

Q. Well, now, Doctor, as a profound student of this subject, and I say that with all sincerity, I wish you would enumerate for the benefit of the Court and the record, all the factors you can think of that have operated since the years 1926 and 1927 adversely to affect railroad revenues.

A. Well, that would be a rather long story.

Q. Is it a long list?

A. Yes, I think it is.

Q. Go as far as you can.

A. We might just as well be frank. We might as

1668 well be frank about it. The railroad industry, I think it has been generally recognized, has been up against a number of handicaps.

Q. I suppose, Doctor, that in recognizing those factors that have been at work, in saying to the Court that you think we may go half way back, you have attempted to take back those factors and study them and appraise their effect and decide whether they have ceased to operate, or there is going to be some amelioration of them, and after doing all those things you have arrived half way back, is that it?

A. All those points have been taken into account.

Q. Well, now, if you will just go ahead; you have referred to the trucks. What other factors have been at work on this railroad economy?

A. Primarily the truck competition and the waterway competition in respect to freight. In respect to passenger traffic, there is the airplane competition which is growing. As to the airplanes, I think I said I was assuming no increase in passenger business on this railroad in the present year over the present level. That is one of the elements of conservatism I have in my estimate. Even in this year there has been a moderate increase in the passenger
1669 revenue of this company which I have not taken into account.

Q. Well, now, have you named all the factors you can think of that operate against the railroad?

A. The principal factor is the truck upon the highway.

Q. Has there been any increase in pipe line competition?

A. Yes.

Q. Has there been any development of plants that turn coal into electricity and transmit electricity instead of transmitting coal?

A. Yes, that is true.

Q. Has there been any increase in taxes that is worth mentioning?

A. The payroll taxes, yes.

Q. Is that something of significance?

A. It is six per cent on the payrolls.

Q. Well, you have taken the position before the Commission that was rather important, have you not?

A. I thought we were speaking of competition a moment ago.

Q. Oh, all right.

A. I did not know you were bringing taxes into the picture.

Q. Well, now, let us bring something else into the pic-

ture. Let us leave competition and go into these other
1670 factors.

A. The interest factor. The principal one is taxes that you have referred to, the Social Security taxes, and the retirement and unemployment compensation which amounts to six per cent of the payroll. I made a complete estimate and allowance for those taxes and an increase in the taxes for the prospective year. In other words, I estimated a certain increase in operating expenses. The Milwaukee normally takes a certain percentage of its operating expenses and spends it for labor. I took six per cent of that increased payroll so I made an allowance for that factor in my estimates.

Q. How much of an allowance did you make for an increase in taxes over what the Milwaukee is now paying?

A. I made no estimate as to an increase in Federal income taxes but I made the statement, if you will recall, that I thought because of the conservative nature of my estimates there was a margin there, an unstated amount, which would wholly or partially offset an increase in income taxes.

Q. So the $20,000,000 takes no account of increases in taxes?

A. Oh, yes, for payroll taxes, but not income taxes.

1671 Q. Well, you have already suffered the increase in payroll taxes?

A. No. We have the six per cent rate, yes.

Q. You mean you applied it to the additional labor in traffic?

A. Yes.

Q. You said you took the different factors and appraised them and you say you can go half way back?

A. Yes.

Q. All right. Let us take the truck situation. You are very familiar with the Commission's report in ex parte 87, are you?

A. What is that by name?

Q. That is the Western rate case.

A. I did not appear in that particular case.

Q. You had the position with the railroads, not that you now have, but you were head of the Bureau of Economics in 1926 when that case was decided, were you not?

A. Yes.

Q. And you must know from your experience on the subject, and isn't it a fact that when that case was decided

in 1927 there wasn't the barest reference in that decision to truck competition?

1672 A. I will take your word for it. I cannot speak from personal knowledge.

Q. Well, can you speak from personal knowledge in saying that as late as 1926 there was no significant truck competition?

A. Oh, I will agree with you on that, yes.

Q. Now, between 1926 and 1931, a great many things happened in respect to the competition faced by the railroads, Isn't that so? That is the year when you went before the Commission in the 15 per cent case.

A. A great many things happened, you say?

Q. Yes, in the way of increased competition with the railroads.

A. Well, there was some increase in competition. I think it has been worse in the last ten years, since 1931.

Q. I see. It has gotten worse.

A. Oh yes.

Q. Well, let us see what happened in 1931. Let us see what the competition was in 1931. The Commission said in your 15 per cent case:

"Movement by truck is a new form of competition which has been developed with great rapidity. It has been frequently effective on less than carload traffic in rela-
1673 tively short hauls of such commodities as live stock, cement, sand, gravel, gasoline, fruits and vegetables, and general merchandise, but it is constantly extending to more and more traffic and for longer distances as the trucks and trailers are enlarged and highways improved. At the present time it is aided by low prices for gasoline and rubber and an oversupply of labor. In addition to rates the advantages which it affords to shippers are rapid and flexible delivery, store door delivery," and so forth.

Does that refresh your recollection that by 1931 that competition had become an ominous thing to the railroads?

A. Yes.

Q. And it has been increasing in the last ten years?

A. Yes.

Q. Now, let us take that one factor; we had no truck competition in 1926 and 1927. You propose to go half way back in those years and yet you recognize that one factor has developed since that time and is increasing. What is your answer to that?

A. Every economic development has certain corrective factors which develop after the situation becomes a serious one. And there are certain factors at work which I
1674 think will tend to stabilize this truck situation and perhaps reduce it as far as the railroads are concerned as an element of competition. There are a great many of those factors, all of which cannot be covered in a short period of time, but a few of them may be mentioned.

One is the passage in Congress in 1935 of the so-called Motor Carrier Act which, although passed five years ago, I consider not to be fully operative to date. Those who are watching the Interstate Commerce Commission and watching the slow progress it is making in putting various features of the act into operation I think will recognize that even today all of the powers granted to the Commission under that act have not been made fully effective. Any new system that involves regulation of a large industry takes time to get into smooth operation. That is one feature.

The various States are increasing their regulative rules over truck and other forms of competition.

In addition, and what is perhaps as important as all other things put together, is the fact that the costs of oper-
1675 ation in the trucking industry are going up much more rapidly than those in the railroad industry, and I have reference to two things in particular. First, the fact that the employes of the trucking companies are more and more becoming unionized and through the processes of collective bargaining are getting more money and shorter hours, more money per hour and shorter hours of work. And secondly, the fact that the cost of gasoline and particularly the taxes on gasoline have gone up quite rapidly.

There are other features of increased costs but those are the two most important.

Now, the economic adjustments, such as I have mentioned, are far more important than the legislative ones which we find in the Motor Carrier Act and the various State legislative acts.

Q. Well, just dealing with this one element that you have mentioned of truck competition; the propriety of going back half way toward a year when there was no truck competition impinges on your term that perhaps we will have some stabilization.

A. We are having it, I think, right now. I would not

say that perhaps we may have; I think it is in process today.

Q. Well, you used those words, Doctor.

1676 A. Yes.

Q. You recall what the Commission said in 1938 in your 15 p[illegible]cent case about the effect of the Motor Carrier Act on competition, do you not, and that they felt they, perhaps better than the carriers, had an opportunity to know how keen that competition was and how it was increasing; do you recall that?

A. Yes, the Commission has expressed itself quite forcibly on that subject.

Q. Back in 1931 the Commission reviewed these factors that were operating to reduce railroad revenue which you say you have got to appraise in order to justify going half way back. Isn't that so?

A. Yes.

Q. And they referred to waterway competition, refreshing your recollection, in this fashion:

"This waterway competition is now a controlling factor on most transcontinental traffic, not only along the coasts but also reaching far inland."

This road is an important transcontinental carrier, isn't it?

A. Yes.

Q. (Further reading.) "Pacific coast lumber moves intensively by rail * * * to the Panama Canal."

1677 And then the Commission discussed the development of competition of the Great Lakes and the development of the Mississippi River.

A. Yes.

Q. What do you have to suggest about the water competition in supporting the half-way-back talk? Is that declining?

A. Well, the water traffic situation has been a rather mixed thing in the last few years. It has gone up and it has gone down. But, there is this to say: The same increased costs I referred to in reference to the trucking industry are applicable to the water industry. The same situation as to higher costs of labor, shorter hours and increased cost of fuel, where gasoline or fuel oil is used, also applies to water.

Now, in addition to that there is something which is still in the future but apparently is coming along, and that is additional regulation of water carriers through a

bill which is now in Congress. I do not like to speak of that specifically because it is still in Congress and may not pass, but there seems to be a fairly good prospect of it passing at the present session.

Q. Well, now, to make a long story short, you
1678 know that the water competition which this road confronts has markedly increased in the last few years, do you not?

A. Yes, I think it has but I am not prepared to speak specifically on that.

Q. Well, did you not make an examination of that in order to make this estimate?

A. Well, I found that its lumber business had fallen down quite clearly and that is the result of the effect of water competition on the Pacific Coast, and I took that into account in my estimate.

Q. Doctor, when did you make an examination, if any, of this property? You made an examination of it, did you not?

A. I haven't made an examination of the Milwaukee on the ground.

Q. When did you start on this work which culminated in this testimony?

A. This particular study I have been engaged on, about two weeks. Of course, I have had the Milwaukee figures in my file for a great many months and I have studied the reorganization plan of the Milwaukee along with those of other railroads for a considerable period of time.

1679 Q. You have the figures of all the Class 1 roads in your file, do you not?

A. Yes.

Q. How many are there?

A. I believe there are 139 at the present time. They vary from month to month.

Q. Well, you say that the water competition has been increasing—

A. Oh, may I say there are only two railroads going through reorganization and it is only as to those railroads that I have made a special study of reorganizations.

Q. Well, I take it you have devoted all your time to this for at least two weeks that you have been on it, Doctor, isn't that true?

A. Nights, days, and Sundays, yes, sir.

Q. Were you ever on this property?

A. No.

Q. Now, the Commission has also referred to decentralization of industry as a factor which has adversely affected the railroad.

A. Yes.

Q. Do you look for some ameliorization in that in order to go halfway back?

1680 A. Well, that is a difficult subject to identify and isolate out of a great many other things.

Q. Well, now, the Commission also said in that 1931 case:

"For a long time transportation of crude oil by pipe line has exerted a controlling force on railroad rates on crude oil and gasoline. To this competition have now been added pipe lines * * * both bituminous and anthracite."

You can confirm that statement, can you not?

A. Yes, and as far as fuel oil is concerned, that has almost disappeared and I make no estimate that it will come back.

Q. Has there not been a tremendous loss of petroleum traffic to the railroads?

A. On fuel oils, yes. Not so much on the products like gasoline.

Q. Isn't that increasing?

A. I am not so sure about the gasoline at the present time.

Q. Do you know whether these western trunk lines are confronted now with what is submitted as the necessity of making a widespread reduction in petroleum rates?

A. No, I am not familiar with that but I am not
1681 at all surprised.

Q. Now, going to this factor of taxes; there has been a very great increase in taxes since 1926 and 1927, has there not?

A. In income taxes, in income tax rates, yes.

Q. Yes. And that is one of the factors you have to consider in determining whether you can go back half way, isn't it?

A. No, I do not think so because I was really talking about gross revenues and you are speaking now of an item of costs.

Q. You do not have to consider whether you have to pay more taxes?

A. No, not when you are talking about the amount of traffic you can handle and the amount of revenue derived.

Q. Well, your whole story relates to fixed charges and dividends; doesn't it?

A. Well, my story going back to 1926 and 1927 had to do with only freight revenue. All the other factors I have brought into the picture are factors as of today.

Q. You did not mean, then, to imply that you would go halfway back to revenue available for fixed charges
1682 in 1926?

A. Oh no, I was talking about freight revenues.

Q. And you do not want to suggest to the Court that you feel there is hope of going back halfway on that point.

A. On fixed charges?

Q. Yes.

A. No, I built up my freight revenues and then I took a certain basis of costs and made forecasts as to those.

Q. As to increased taxes, as to an increase in taxes, that has been a serious element, hasn't it?

A. I took the taxes as they are today and made an estimate for the future based on today's rates and payments.

Q. Won't you answer my question, which is, isn't it so that the increase in taxes has seriously and adversely affected railroad income in the last ten years?

A. I cannot answer that question directly but I will answer it in this way, and I am trying to meet you as frankly as I can.

There is the payroll tax, the income tax, and the property tax. The property taxes on the railroad generally have gone up. The payroll taxes are, of course, a
1683 new thing and that shows a considerable increase.

That is, it is a new tax and whatever is paid in that tax is something added to the costs.

Now, as to the income tax, the rates have gone up and, of course, for those railroads which are making any income at all, the increased rates have meant increased taxes.

Now, the sum of the whole thing is that the actual amount of taxes paid by the railroad during the last three years, including all these three factors, is actually less than it used to be in money. In ratio to the total revenue, however, the amount is relatively greater, so we have to keep our mind clearer when we talk about taxes and taxes going up.

Q. When you were testifying in the 1931 case in Ex

Parte 123,—the 1937 case—when you were seeking to get increased rates from the Commission, which you did not get in the degree you asked for, didn't you very greatly emphasize the seriously adverse effect of this increase in taxes?

A. The greater number of cents per dollar of revenue which were being thrown off in taxes, yes.

Q. That is what you had to pay the taxes out of, wasn't it?

1684 A. Yes, that is right.

Q. Well, now, is the rate level a matter which affects your gross revenue?

A. The freight rate level?

Q. Yes.

A. Yes.

Q. If there is any reduction in the freight rate level that operates on the gross and on the net equally, doesn't it?

A. Yes.

Q. In absolue terms?

A. Yes, assuming your traffic remains the same.

Q. Well, now, in 1931 you asked for a 15 per cent increase to meet these competitive conditions and you got a very small percentage temporarily, didn't you?

A. About five per cent or something like that.

Q. And that was finally taken off, wasn't it?

A. Yes. It ran about a year and eight or nine months.

Q. And then you got an increase in 1938 to meet this situation.

A. Well, we had another increase in between, if you will remember.

Q. What happened to that?

A. That was taken off at the end of 1936.

1685 Q. This one you got in 1937, was that enough to meet increases in expenses which you testified the railroads had?

A. No, it was not.

Q. It fell far below that, did it not?

A. Yes, considerably below. I think, as I remember it now, it meant about 50 per cent of the increased cost.

Q. Do you know to what extent, if at all, the railroads have been able in the face of competition to hold those rates?

A. I think, generally speaking, the rates have been

pretty well held. There have been some adjustments, of course.

Q. Do you know to what extent the Milwaukee Railroad has been able to hold those increases?

A. I think the best answer is to show what the average revenue per ton mile has been on the Milwaukee in the last three or four years. I think they went up in 1938 as compared with 1937 and came down a little in 1939, but not a great deal.

Q. Do you know anything about the reductions the Milwaukee is now confronted with?

1686 A. May I read those figures into the record to make the record clear?

Q. Yes.

A. The average revenue per ton-mile on the Milwaukee in 1937,—that was before this 1937-8 rate increase of which we are speaking—was 9.14 mills per ton mile. In 1938 it went up to 9.70 mills and in 1939 it came back a little to 9.60 mills, which seems to indicate that up to the end of 1939, at least, the increase had been fairly well held.

Q. Now, that reduction between 1938 and 1939 is all reflected in the net, isn't is?

A. Yes.

Q. Now, do you have there the ton mile earnings in the 1920s?

A. Well, let us take those years 1926 and 1927 that we have been talking about. In 1926 it was 10.50 mills compared with 9.60 as today, and in 1927 it was 10.20 mills. I would like to correct that 1926 to 10.39, if I may. 10.39 in 1926 and 10.20 in 1927.

Q. Those were very substantial reductions in terms of their effect on net income?

A. Yes.

Q. The Commission said in your 1938 15 per cent
1687 case, did it not, that there had been a reduction in rates, in the rate level between 1929 and 1937 or 1938, of about ten per cent. Isn't that about right?

A. At the moment I haven't the 1929 figure in mind.

Q. I think I can refresh your recollection.

A. I would be very glad to have you.

Q. I am reading now from Volume 226, Page 56 of the Commission's report.

"The reduction in average revenue per ton-mile is due in some degree to changes in the relative amounts of the

various kinds of traffic and to an increase in the average haul resultant from the loss of short-haul traffic; but making allowance for these elements, the freight-rate level averaged 10 per cent lower in 1937 than in 1929."

Does that refresh your recollection?

A. Yes.

Q. You have read this report, have you?

A. Yes.

Q. Well, now, that 10 per cent in revenue on a hundred million dollar gross would mean a reduction in that revenue to the Milwaukee of about ten million dollars, wouldn't it?

A. Yes, if it were expressed.

1688 Q. Well, do you say the Milwaukee situation was different than that in—

A. Well, let me give you the exact figures.

Q. Haven't you given them to us?

A. No, not as between 1929 and 1938. In 1929 the average receipts per ton-mile on the Milwaukee were 10.48 mills and in 1937 they were 9.14 mills.

Q. That is more than 10 per cent.

A. That is a little more than 10 per cent, yes.

Q. So the Milwaukee suffered a little bit more than the roads as a whole?

A. Yes, apparently so, relatively.

Q. Well, now, wages is another of these factors that affects net incomes, isn't it?

A. Yes.

Q. You have had some participation in wage cases since 1930, haven't you?

A. Yes.

Q. And since 1926, this year that you are going back halfway?

A. Well, not so much prior to 1930 as I recall it. I have been in a number of wage arguments since 1930.

Q. Will you state to the Court what the general
1689 wage cases have been since 1926 and 1927, I mean the nation-wide wage cases, what their result has been?

A. Well, that is a long story. I will be glad to go into it.

Q. Well, can't you tell that in two or three sentences?

A. When the depression came on the railroads and their employees got together towards the end of 1931 and discussed a wage reduction and as a result of an agreement

which was signed on January 31, 1932, and which went into effect at midnight of that same day, a so-called 10 per cent deduction was made from railroad wage rates to be effective for one year until February 1, 1933. On February 1, 1933 it was extended by mutual agreement for nine months, and again nine months up to the first of July, 1934. At that time two and a half per cent of the ten per cent was reduced and the deduction was taken off.

The Court: It was restored.

The Witness: It was restored, yes, sir.

1690 And on the 1st of January, 1935, another two and one-half per cent was restored, and on the 1st of April, 1935, the remaining five per cent was restored, so that by 1936 the old level of 1931 had been completely restored.

Q. Doctor, may I interrupt you just a moment?

A. Yes, sir.

Q. You are answering my question, but I want to ask you this: From the period, say, 1917 up to 1926 there had been a series of wage increases, hadn't there?

A. Yes. That is a long story.

Q. Yes.

A. After the war the Labor Board was organized and they put into effect a number of increases and a number of decreases. There were also a number of regional changes that were made from 1927, 1928 and 1929, in a number of these separate groups of employees like the trainmen and so forth.

Q. Doctor, you don't want to emphasize those reductions to the Court, do you?

A. You asked me from 1921 to 1940. I am giving you the story.

Q. I confused you, Dr. Parmelee. I am saying now, during that period during the war and immediately

1691 after the war there was a series of marked increases in wages, wasn't there?

A. Principally in 1920, and then some regional and other changes during 1927 and 1928.

Q. Country wide increase in wages would run from 20 to 40 per cent, would they?

A. No, not as high as that. There was one increase in 1920 which was considered to be equivalent to about 21 per cent, but about half of that was taken off the fol-

lowing year, so that the net that was left was 10 or somewhere between 10 and 12 per cent increase.

Q. The Adamson increase was from 15 to 20 per cent, wasn't it?

A. Now you are going back to 1916?

Q. Yes, doctor, I am afraid that I confused you. I am going back now. I withdraw my earlier question, and I am asking you about these wage increases during the war.

A. You said 1926. I beg your pardon.

Q. Let us start over.

A. All right.

Q. I think it is my fault entirely. The Adamson Act that was passed January 1, 1917 increased wages from 5 to 20 per cent, didn't it?

1692. A. Oh no.

Q. You testified that in the Northwestern reorganization a month ago.

A. Oh no. There was only one group of employees, the trainmen which got an increase by the Adamson Act, and that was not an increase in wages; it was simply a reduction in hours, and it ran around 10 to 12 per cent, if I remember rightly, for these groups of employees.

Q. Don't let us quibble about that. The railroads had the same amount of work to be done, and when the basic hours were reduced, then they had to employ them for these longer hours and pay them more money.

A. In train service, yes.

Q. That was from 15 to 20 per cent.

A. No, not as much as that.

Q. How much was it?

A. 10 to 12. The director of railroads in June, 1918, made a 25 per cent increase.

Q. 25 instead of 40?

A. 25 instead of 40.

Q. In 1920 what was it?

A. Then the Railroad Labor Board came along and made this 21 per cent increase in 1920 which I spoke of a moment ago.

1693. Q. Yes.

A. Then they took half of that off in 1921, I think it was July 1, 1921.

Q. Well, when you add up the 12 or 15 per cent to the trainmen, the 25 per cent in 1918 and the 22 per cent in 1920, which you say was somewhat reduced—

A. Yes.

Q. —it comes pretty near the figure that I gave of from 30 to 50 per cent, doesn't it?

A. Let us not argue about this. Let me state what the facts are, that prior to the war the average hourly earnings of all railroad employees was something less than thirty cents per hour. Today they are pretty close to seventy-five cents per hour. In other words, they have gone up two and one-half times.

Q. Two and one-half times on the hourly basis.

A. On the hourly basis, yes.

Q. Let us go back to the story you started to tell in 1930.

A. Yes.

Q. There was a decrease of 20 per cent, which was restored.

A. That was restored, yes.

Q. Then in 1937 there was an 8 per cent increase, wasn't there?

1694 A. Between 7 and 8 per cent increase, yes, and in 1938 the railroads tried to get a 15 per cent decrease and failed.

Q. Doctor, you appeared in that case.

A. I appeared in the 1937 case and the 1938 case as well, both of them.

Q. And you lost both times.

A. The 1937 case was not actually lost. It was settled on a basis of negotiation.

Q. On a 7 per cent increase.

A. 7 per cent increase.

Q. In 1938 when you attempted to reduce wages by 15 per cent, you told the Board that the railroads simply were unable to pay the existing rage of wages, did you not?

A. That is true, yes. At that time that was correct. That was in 1938, remember.

Q. Of course this matter of wages is a fundamental one in relation to railroad income, isn't it?

A. Yes.

Q. And that is one of the things you must consider, and you say you did consider, in deciding whether you could go back half way to 1926 and 1927.

A. No. I want to get that straight. My going back to 1926-1927 was entirely on the basis of traffic and 1695 earnings. By earnings I mean freight revenue. Costs of operation in 1926 and 1927 have nothing to do with

it. The costs I am taking at their present level and probable future prospects.

Q. I think you did say you would not for a moment tell the Court he could go back half way to the net income of those years.

A. That is true, yes.

Q. Now, do you look for any amelioration of this wage level situation?

A. By amelioration you mean a lower rate of hourly wages.

Q. Lower rate, yes.

A. It is very hard to see that in the picture.

Q. You know the railroads are now confronted with demands for a further increase, don't you?

A. No. No.

Q. Don't you know that?

A. No, I don't know that.

Q. You don't know that officially?

A. No, officially or personally.

Q. Is the reference to it here the first reference you have heard in regard to that?

A. The only thing I know of, in some regions in the west the men have asked for a vacation period, I
1696 believe, of one week, but I didn't know there was any demand for wage increase.

Q. Have you seen any estimates of what that vacation allowance would mean to these railroads?

A. I have heard of the estimates, but I would rather not quote them here, because I am not sure they are correct.

Q. You know in the case of the Northwestern the demands made would amount to $600,000,000 a year for the Northwestern?

A. In that particular year. I thought you meant generally.

Q. You know that for the Northwestern?

A. Yes.

Q. The Milwaukee operates more miles than the Northwestern.

A. Yes.

Q. Does it have the same gross income?

A. About the same, a million dollars apart in 1919.

Q. Do you mean your estimate of $600,000,000 would be lower on the Milwaukee?

A. I wouldn't make a guess on that at all.

Q. That would be rather important in reaching a determination as to whether there was going to be any advantageous change in the wage situation, wouldn't it?

1697 A. Prices may go up, wages may go up. Prices have actually gone down in the last six months.

Q. Do you think that will continue?

A. Suppose wages go up, then we must expect, and I think we have a right to expect, that rates will be adjusted accordingly.

Q. Isn't that exactly what you told the Commission in the 1931 case and the 1938 case?

A. No.

Q. That those costs had gone up and you must have more money?

A. Yes, certainly.

Q. That you must have these additional revenues?

A. Yes, and we got them to a certain extent. We didn't get all we asked for, but we got relief.

Q. You stated it was inadequate, didn't you?

A. And I say in the future relief must be had in case of a long upward trend in wages and prices.

Mr. Smith: Excuse me just a minute, your Honor. I have got my papers mixed up.

Q. Doctor, you finally come out with $20,300,000, do you not?

A. Yes.

Q. I think you said that you thought that indicated an equity for the stock.

1698 A. Yes.

Q. Do you know how long it has been since the Milwaukee has paid a dividend on its stock?

A. I think 1917 was the last dividend, if I remember rightly.

Q. What dividend was that?

A. I cannot tell you now. That was too long ago.

Q. If I told you it was on the preferred, you would not have reason to question it, would you?

A. No, I wouldn't question it.

Q. That is the last dividend that has been paid?

A. Yes.

Q. I suppose you have read the debtor's brief in this case, haven't you?

A. Yes.

Q. Now, reminding you that you have told the Court that you had no intention of saying that this property

could go back into the income available for interest of 1926 and 1927, I will ask you if it is not a fact that the property in those years fell far short of having enough income to pay its fixed charges on its debt?

A. Are you asking me if that was a fact?

Q. I am asking you if that is not a fact.

A. Yes, I think that was a fact.

1699 I think that is well known. I refer to the reorganization of 1928.

Q. So that the road went into reorganization in 1928 after one of what you say are the two best years it ever had, and following the years 1926 and 1927 toward which you now seek to go half way?

A. In freight revenue.

Q. And in the year 1926 the property had a deficit after interest of about two million and a half, didn't it?

A. I don't seem to have figures going back to that period, but I am willing to accept—

Q. I will hand you your brief in this case.

A. Yes. I haven't that with me. Yes, that is correct.

Q. In 1927 that deficit after interest was $6,365,000, was it not?

A. Yes. That, of course, is on the basis of the previous capital structure of the company, not the present one.

Q. I was just going to refer to that, doctor. That debt in 1926 was how much?

A. Oh, I haven't all those figures back to 1926. I have a memorandum which I prepared in my office which went into that whole reorganization, but unfortunately

1700 I haven't it with me here.

Q. Subject to check, will you accept any figure that in 1926 the debt of the Milwaukee was $438,000,000?

A. I would be willing to accept that. I cannot check that from memory.

Q. And it was on that debt of $438,000,000 that in those two years of 1926 and 1927 the property failed to earn interest by approximately $10,000,000?

A. Yes. That was all fixed interest, I believe, at that time.

Q. That doesn't make any difference, whether it was fixed or not, as far as its ability to earn is concerned.

A. That depends on how your accounts are set up. The Commission, you recall, does not consider contingent interest. A part of that interest goes into another place, in income account.

Q. You think they had contingent interest charges above that?

A. No, I don't think they had any contingent interest in 1926 and 1927.

Q. You think the ten represents the amount by which they failed—

A. To earn fixed interest on funded debt.

Q. Was there any other interest at that time?

1701 A. Yes, I think so. I speak without absolute assurance in the matter.

Q. Now as compared with the $438,000,000 of debt in 1926, what is it today, including accumulated interest?

A. I turn for that to the report of the Commission in this case, 239 ICC 485, appendix on page 578. They give the total debt as $508,000,000 in round figures; accumulated interest up to December 31, 1938 at $118,000,000, or a total of $627,000,000 in round figures.

Q. So that the debt on the property since those years of 1926 and 1927 has increased approximately $200,000,000?

A. If you add the accumulated interest, yes.

Q. That is debt, isn't it?

A. Yes, it is an obligation; I wouldn't call it debt.

Q. So that to summarize that, in the years 1926 and 1927 toward which you are going back half way—

A. On freight revenue.

Q. Yes.—the property earned $10,000,000 less than enough to pay the fixed interest on $200,000,000 less debt.

A. I thought you said $600,000,000 for 1927, a deficit of $600,000,000.

Q. I am talking about 1926 and 1927, and you read

1702 the figures as follows—

A. I thought you said the deficit in 1927 was about $6,000,000.

The Court: He is talking about 1926 and 1927. Two years you are mentioning, aren't you?

Mr. Smith: Yes, that is right.

A. You mean the sum of the deficiency for the two years was ten million, or five million dollars per year.

Q. If you want to average it.

A. All right.

Q. Now answer the question.

A. I will have to ask for the question.

Q. Well, the income in those years was ten million dollars less than enough to pay interest on $200,000,000 less debt than they have now.

A. For the two years combined, yes. I don't think it is a fair comparison, though, when you bring in accumulated interest and add to your present debt. It is an obligation, but it is not an interest-bearing debt. That is the point.

Q. Well, to be perfectly candid, I don't think you are an expert on that subject, Dr. Parmelee.

A. I am inclined to agree with you.

Q. Doctor, do you know what the average interest
1703 rate is on this property on the money that it has borrowed?

A. I haven't figured it out. It could be very easily done from this appendix.

Q. Well, it is 4.7 per cent.

A. The rate is shown for each issue of bonds.

Q. The Commission stated that it is 4.7 on bonds.

A. Yes, 4.7.

Q. You gave the figure for the debt as indicated in the report of about $625,000,000, did you not? $620,000,000. You just read it.

A. Well, the sum of the debt and accumulated interest, you mean?

Q. Yes. Well now, it is easy arithmetic, isn't it, that by applying 4.7 per cent to that much debt is about $29,000,000 of interest on present debt.

A. Yes, it would be on that basis. That is purely a mathematical calculation.

Q. So if for the last question we should accept for your hypothesis this $20,300,000 it would still fall short by some $9,000,000 to pay a return on present debt.

A. Yes, at the rate of 4.7 per cent.

Mr. Smith: That is all.

Mr. Oliver: If your Honor please, the insurance group and savings bank group have attempted to work out
1704 a program of cross-examination which would prevent duplication in cross-examination for the two groups. Mr. Smith has conducted the cross-examination for both groups. I have no further questions to ask.

The Court: How about you, Mr. Clay? Do you want to ask some questions?

Mr. Clay: I have a few questions.

Cross-Examination by Mr. Clay.

Q. Now, Dr. Parmalee, you testified this morning about the ability of the Milwaukee to translate its gross into net

at an accelerated rate proportionate to increase of business, and I did not catch your testimony, but you made some statement about the relative ability of the Milwaukee as compared with all other Northwestern roads. Did you say that the Milwaukee was outstanding in that respect in the Northwestern region?

A. I don't think I compared that feature with other Northwestern lines.

Q. Well, will you do it now?

A. I would have to do some figuring on that, Mr. Clay. I would be very glad to do it, but I haven't the figures, and it would take a little time to work them out.

1705 Q. Well, I don't want to figure down to the last decimal, but your get reports of all these roads and study them; you have some general ideas. Would you give me a general idea.

A. I can give you my opinion, although I am sorry to say it is only an opinion at the present time.

Q. That is all I want, because you have been giving opinions right along.

A. I can say this with the utmost confidence: Compared with railroads generally, that is, not just the Northwestern lines, but the railroads of the country generally, the Milwaukee during the last two years made a much more profitable showing than the other lines combined. My impression is—I do not speak with assurance on that—my impression is that the same thing is true if I compare the Milwaukee with the other Northwestern lines, but I would prefer first to check that statement before I made it with absolute certainty.

Q. Do you mean to say that all the Northwestern lines have shown a greater improvement in this respect than the lines in other parts of the country?

A. No, I don't mean to say that exactly. What I did mean to say was that I speak with confidence on the railroads generally, and not with such confidence as to

1706 the Northwestern lines. That is all.

Q. Well, there are, say, four competitive Northwestern lines, trunk lines. I will name them. The Great Northern, Northern Pacific, Northwestern and the Milwaukee. Now would you rank the Milwaukee in those four?

A. You are speaking now of just this particular feature?

Q. Exactly, yes.

A. I wouldn't venture to do that without taking the

individual returns of the four lines out and looking them over.

Q. You have testified in three of these reorganization cases, I believe.

A. Yes.

Q. And in each case on behalf of the stock interests, is that not true?

A. Yes, that is correct.

Q. And apparently you are in full issue on these reorganization lines because, let me refresh you on your testimony, what you said about Northwestern in this respect that I asked you about: "The Northwestern, of course, made a bette. showing relatively than the Northwestern region generally or of the western district." Page
1707 1360 of transcript of the hearing before Judge Barnes.

A. Yes.

Q. Early this summer. Apparently you are inclined to be more optimistic about these roads in bankruptcy than about roads generally, is that true?

A. No, I don't think that is true.

Q. Well, you did testify at some length this morning comparing the improvement in freight and passenger locomotive situation on the Milwaukee, and the freight car situation, and various other situations as between 1934 and 1939. Now would you say that that improvement was due in any respect to the fact that this road had been in bankruptcy since 1935?

A. No, I don't think so. I simply showed the improvement over the whole period, if you recall, 1921 to 1939, and then to show that was a progressive improvement, and merely for that purpose I showed what had happened in the last five years since just before the beginning of the bankruptcy, so that that was simply a continuation through the bankruptcy of a progressive improvement which had already occurred.

Q. You don't mean to say, do you, that during the bankruptcy this road has not had a lot more money to
1708 spend, it has not been paying any interest to speak of to its creditors—hasn't it been using that money to improve its situation and reduce the number of unserviceable locomotives?

A. I think it has done adequate mainteance work.

Q. And on its maintenance of freight cars?

A. Yes.

Q. And increased the proportion of treated ties, increased the proportion of tie plates, and so on ad infinitum?

A. I don't think that is undue maintenance. It has been adequate.

Q. Do you think that money has been improvidently spent?

A. No.

Q. That having been spent, it would not be reflected in the increased efficiency of operation?

A. No, I don't think it was improvidently spent, and I think I testified that it would have its effect on the future net earnings. In other words, it would tend to reduce expenses, and therefore increase future net income.

Q. Hasn't it had a very substantial effect? Can anyone in common sense say that it has not, in increasing the efficiency of this operation during the bankruptcy 1709 period?

A. I didn't know there was any argument about it at all.

Q. You admit that it has had a very substantial effect?

A. Certainly. That is the point I was trying to make.

Q. Now, that has been money which, if the road had not been in bankruptcy, would have gone to the creditors.

A. That is a very hard question to answer.

Q. It would have been paid out in bond interest.

A. Of course, if they had paid interest and they didn't have money to operate and pay interest, so we are discussing something that could not have happened. But naturally if they had paid the interest charges, they would have kept maintenance far below reasonably safe standards, that is true. That is a situation that just could not have happened, so it is not in the picture.

Q. Do you think this increased efficiency is unique on the Milwaukee?

A. No.

Q. Isn't the same situation true as to the Northwestern?

A. Yes. It has been true on the railroads generally. 1710 I don't mean to put the Milwaukee—

Q. Confine yourself, please, to the bankruptcy roads, the roads that have not been paying interest.

A. I don't put the Milwaukee up as unusually good, although I think it has had a very very fine record.

Q. I wish you would confine yourself to the three roads

you purport to have studied. Doesn't that situation obtain in the case of the Northwestern?

A. The Northwestern has had a good record, and so has the New Haven, yes, sir.

Q. You are appearing for the stock interests here, and you did testify that you thought there was value in the present stock?

Q. And you based your testimony in part on this increased efficiency.

A. Yes, increased prospective earnings.

Q. Does it strike you as fair and equitable that to the extent that increased efficiency has been true, that the diversion of money from interest on the bonds to improving the operation should serve as justification for issuance of stock?

A. Well, that would be a question that I would not want to express an opinion on without studying the thing much more carefully than I have. In other words, I think
1711 the thing to consider would be what would have been done had this railroad been a going concern instead of being a bankrupt concern, and had it had earnings sufficient to pay its interests and also carry on adequate maintenance. In other words, you have got a good many factors you have to consider there.

Q. Assuming that it comes out of this court as a going concern with a certain amount of fixed charges, charges that are payable out of income, will this property in your opinion be in as advantageous a position to spend money on modern improvements, or isn't it likely in the natural course of human events that the pressure will be to pay as much bond interest as possible?

A. They naturally will wait to pay their contingent interest, yes. Is that your question?

Q. Yes.

A. Yes. My answer is yes.

Q. So that it is true, is it not, that in bankruptcy the management has much more money to spend than it ordinarily has as a going concern? Does that correspond with your observation based upon your extended work with the Association of American Railroads?

A. I think that the maintenance of roads in bankruptcy is usually adequate. I am not prepared to say that
1712 it is more than adequate.

Q. You are an experience witness, aren't you? You

appeared a great many times for the Association of American Railroads.

A. Not so much for the association as for the railroads generally. Yes.

Q. Now I understood you to read a certain sentence this morning from the official report of the Interstate Commerce Commission to the Congress.

A. Yes.

Q. For the year 1938. I ask you if this is the sentence: "Since the beginning of the depression, the future earnings of the railroads have been so impossible to forecast that the preparation of just and reasonable plans of reorganization has been extremely difficult?"

A. Yes.

Q. I will ask you to read the next three sentences and tell me why you stopped short with the sentence.

A. This is from page 11 of the annual report of the ICC to Congress.

Q. I will show you the sentence I mean. It is right here (indicating).

A. The next sentence is: "This may be illustrated by the events of the past year."

This was written in 1938.

1713 "After earnings reached the low point of 1932 they began a gradual ascent which continued until the middle of 1937. The reorganization plans for those years were prepared in the light of this apparent trend."

Are those the three sentences you had in mind?

Q. The next sentence.

A. "The increase in taxes, wages and other expenses in 1937, however, combined with the proportionate drop of traffic in the latter part of that year, had so disasterous an effect on net earnings that many of the carefully wrought plans virtually became obsolete over night."

Q. I will ask you, if there is a sudden cessation of hostilities in Europe, is not the same thing apt to happen overnight as happened in 1937?

A. There might be a period, probably would be a period of readjustment, yes.

Q. That was one of the reasons why you cannot venture to state when this hypothetical $20,000,000 year can be reached.

A. Yes, I think that is one of the reasons just at the present moment.

Q. You have read this portion of the ICC's report to

Congress for the year 1938 which deals with the
1714 so-called railroad problem, have you?

A. Yes, I read the whole report when it came out very carefully.

Q. And do you agree with this statement which I will read: "As stated above—" this is page 17— "we regard the extraordinary increase in transportation competition as a primary cause of railroad ills. Whether it realizes it or not, the country has in fact experienced a transportation revolution in a very short space of time. The automotive highway vehicle has been the principal factor in this revolution. In the earnings of persons it is not by far the most important means of transportation, and in the carriage of property it is growing in importance every day."

I do not want to read the whole page. I am shortening it.

"This transportation revolution has been characterized also by a tremendous growth of private transportation as distinguished from a common carriage for the public. Such a private transportation in the carriage of persons has become a very large factor in the carriage of property."

Then on a later page where it says: "The carriers are engaged in a savage fight for position." Little regard for ultimate operating costs. I want to ask you
1715 this question, I read that as a basis for this question:

Do you think the railroad managements of the country, not meaning to cast any reflection on the managements, has shown an awareness of the change of the railroad business from a monopoly business to a competitive business in their recurrent requests to the Interstate Commerce Commission to raise rates?

A. That is a very hard question to answer yes or no to. I think that the managements generally are very keenly aware of this competition and of the implications of it. Now there are differences of opinion as to whether the way to meet it is to reduce rates or increase rates, but when an industry finds itself in the position where it must have more money to pay its wages and its taxes, as it sometimes does, there seems to be no other way out but to go to the only body which can give it authority to make such adjustments in such forms of traffic as are less competitive than others. I am not in any position to

pass judgment on the managements of the railroad of this country.

Q. You are an economist, aren't you, Mr. Parmelee?

A. I think that the managements have tried to follow what seem to be to their best judgment the most
1716 feasible paths that were open to them in the last few years.

Q. And they have shown a surprising unanimity, haven't they, in these petitions and requests for blanket raises? Practically every railroad in the country has joined in petitions.

A. Yes, after they have had full discussion between themselves as to the policy it is advisable to follow.

Q. You are an economist; you know what the law of diminishing returns is, don't you?

A. Yes, and the law of increased returns as well.

Q. And the way it reacts in competitive situations?

A. Yes.

Q. What is your feeling? Do you think raising rates is going to reflect in a larger net return, where the commodity which is transported is a highly competitive transport commodity?

A. Mr. Clay, I wish I knew what the answer to that question is. If I knew it, I would be probably the wisest man in the transportation industry. We are having an example of that working out right now in the passenger service, with reference to the decrease in passenger rates made by order of the Commission last March from two and one-half cents to two cents. So far that has shown a very marked decline, or brought about a very marked decline in the revenues of eastern carriers. So
1717 whether it is going to work or not, I don't know. It is a matter of trial and error.

Q. Based on your observations, can you say at the present time the carriers as a whole are charging as high a rate as the Commission allows them to charge?

A. No, they are not. They are away under the maximum in a good many cases.

Q. Is it not true on commodities, particularly those competitive in a transportation sense, the railroads have voluntarily reduced rates below what the Commission allows?

A. Yes, that is particularly true in the passenger service.

Q. Recognizing that the railroad is a competitive business.

A. Yes, which shows the awareness of the railroad management you spoke of.

Q. In the transportation of property would you say the same awareness was evidenced in the petitions to the Commission to raise rates?

A. Those rate adjustments deal with different kinds of traffic under different conditions. I don't think you can lump them under one breath and say rate increases. The rate increases have been very carefully selected with
1718 respect to certain forms of traffic where it is believed that competition has the least effect.

Q. Of course, a high degree of intelligence has been used in attempting to pick out the commodities tied to rails.

A. That as to which there is the least amount of competition, yes. There has been no secret about that. That has been brought out repeatedly before the ICC.

Q. Now, I have a decision of Federal Judge Sims in the Denver and Rio Grande reorganization, dated August 30, 1940, and he talks in this decision about the increase in growth, and I want to read you this sentence: "A decisive factor is that this peak tonnage revenue per ton mile for 1939 was 1.018, one of the lowest in the road's history. For June, 1940, the revenue per ton mile was less than for any June in the history of the road."

Would you agree with that Federal Court that the decisive factor among all of these various factors that you went over with Mr. Smith is the revenue per ton mile?

A. The decisive factor with respect to what? I am not entirely clear about your question.

1719 Q. With respect to the possibility of this road reaching that twenty million year of yours.

Mr. Osborn: Your Honor, I think in fairness to the witness, the witness ought to have the paper to see what he is talking about here.

Mr. Clay: All right.

A. You mean the increase I have predicted?

Q. No, I am asking you whether you agree with the Federal Court in that case as to the weight that should be given or as to the importance to be given to revenue per ton mile. You have a common sense, practical judgment, as well as being an expert. Isn't that just a common

sense answer? You don't have to answer if you don't wish to.

A. I think the Court was talking about one thing and I am talking about another. I don't think I disagree with the Court at all. I want to make just as complete and frank an answer as I can. My answer is that any earnings in the future must depend on any number of factors, and that revenue per ton mile is only one of the factors. I am afraid I will have to make that answer and stick to it. I wouldn't say it is the decisive factor. It is one of the controlling factors.

Q. Of course another factor is wages, isn't it?

A. No, so far as freight revenue is concerned,
1720 I am thinking of our number of ton miles, in other words the gross volume of the traffic and the character of the traffic, the compensation of it.

Q. I am a little confused. Let us clarify this and analyze it.

A. Yes.

Q. I am talking about the decisive factor in the net revenue, the twenty million figures being the decisive figure there, the revenue per ton mile.

A. No. There I answer "No" with a good deal of confidence.

Q. Why is that?

A. It is only one of a considerable number of factors.

Q. Pin yourself to the twenty million dollar figure.

A. The twenty million dollar figure is a long way from your revenue per ton mile. They have no direct relationship to each other whatever.

Q. I know that, but isn't wages a factor?

A. Yes, but that is a factor of costs, and your revenue per ton mile is a factor of revenue, two different things.

Q. In getting your twenty million dollar figure you assume a constant level of wage rates, do you?

A. I assume the present Commission wage scale, yes.

Q. Exactly.

1721 A. And I might add at that point, I am assuming railroads will do in the future as they have done in the past, that where there are moderate wage increases, not tremendously big ones, to a large extent they have to be absorbed by reductions in the number of men on the payroll.

Q. In coming back to this factor per ton mile, you

have also assumed a constant freight rate level, haven't you?

A. Yes. There again, as I answered Mr. Smith a while ago, I have assumed this freight rate would continue as it is now, barring a change as to pressures which would require an increase in rates.

Q. You assume that the wage rates are going to be constant and freight rate levels are to be constant?

A. No, let me make myself clear. I am predicating the present wage and price level, with the proviso, however, that if there should be any marked change up or down, your freight rates will be adjusted accordingly.

Q. Exactly.

A. Yes.

Q. You don's think raising freight rates will drive important business to trucks, waterways and airplanes?

1722 A. I don't know how that will work out. That is a question to be determined at the time the question arises.

Q. Well, I don't want to argue with you. Now, you said something about a partial business recovery now under way. You are a post graduate in economics from Yale University and are an economist. You follow such things as the wage index in industrial production.

A. Yes.

Q. I will ask you if that index in December of 1939 was not higher than ever in the history of the company?

A. Yes, I think it was. It got up to 128. Let me say this, though, in all good temper. I did not say that a partial business recovery was under way. I made no statement about business generally.

Q. A partial recovery.

A. What I did say was that there was a recovery of the business of this particular company back toward a certain level. That is what I said. I made no comment on general business conditions.

Q. This particular company.

A. Yes.

Q. You mentioned four commodities which enter principally into its freight traffic. You said it served a

1723 farming and livestock market, that it also served important mining and lumber industries.

A. And I referred to the manufactured products in carload lots.

Q. Yes. I don't want to be unfair.

A. Yes. A very important point.

Q. Now, in figuring this twenty million year, have you given any consideration to the possible loss of export markets due to world conditions?

A. Yes, I took that into account. It is very difficut, of course, to take some of these various and different factors into account.

Q. Isn't this road an important wheat carrier?

A. Yes.

Q. And livestock carrier?

A. Yes, not so important as to livestock.

Q. Did you take into consideration if Germany wins the war, will that possibly even further decrease—

Mr. Osborn: Is it necessary to go into hypothetical questions on cross-examination?

The Court: Objection sustained. I was wondering if somebody was going to object.

Mr. Clay: I don't want to take too much time here.

Q. Coming back to the discussion of the so-called railroad problem, the Interstate Commerce Commission in its report to Congress for the year 1938, do you not 1724 consider that a fairly comprehensive study of the whole railroad problem?

A. It was a very good statement of the situation, yes.

Q. And you have read and are familiar with this?

A. Oh, yes.

Mr. Clay: I would like to offer this report in evidence, at least to the extent of pages 1 to 33, as being a comprehensive and thorough discussion of factors such as have been discussed by Dr. Parmelee in his evidence.

Mr. Osborn: Your Honor, can't we refer to that in our briefs if we want to? It does seem to me argument. We don't want to open up that line, or anything about it. The report of the Commission, I should think, could be relied upon in briefs and oral arguments.

The Court: It is an official document, isn't it?

Mr. Clay: Yes. If that is understood, and there is objection, I withdraw my offer. I would like to have the same stipulation and understanding concerning page 5, at least, pages 5 and 6 of the 39 report.

Mr. Osborn: Same understanding.

Mr. Clay: Q. The 1939 annual report, I wish, Dr. Parmelee, to read and comment on just one paragraph.

A. You make it a little embarrassing to put me up
1725 against the Interstate Commerce Commission. I don't like to disagree with them.

The Court: If your comment on this is not any worse than on the other one, it is all right.

The Witness: I think they have been over pessemistic in some of their statements.

Mr. Clay: Read the discussion.

A. "This discussion, in our judgment, was and is now a concise and comprehensive and sound review of the matter. It is as applicable to present conditions as to those which existed a year ago."

Do you want the whole paragraph?

Q. Just the discussion in the front.

A. "It is true earnings of the carriers have increased in recent months, as elsewhere shown in this report. The tendency of traffic was upward as general business conditions became better. Even before the outbreak of the European War, and the latter unfortunately has confirmed this railroad situation. It is delusive, however, to expect this fact will in itself solve the transportation problem or render attempts to deal with it unnecessary. We know from past experience that the upswing in business which war brings is temporary and likely to be followed by
1726 an aftermath in which conditions will be worse than before."

Q. Have you any comments on that based on your service with the Association of American Railroads during the last war period?

A. I think we will have a considerable upswing in the next few months or years, according to the duration of the war, as to which, of course, no one can give a prediction at the present time, and that there will be a transition period, that is, the period I referred to a few moments ago, which will probably represent some dip down, and that thereafter we will have a gradual upward trend; that we will gradually approach a more normal level. How long that will take will depend upon conditions which are still veiled in the future.

Mr. Clay: Thank you.

The Court: Is that all?

Cross-Examination by Mr. Hoffman.

Q. I want to ask you a question or two. I believe you testified, Dr. Parmelee, that the two five year periods used by the Interstate Commerce Commission were periods of very low earnings, is that right?

A. They were the period of lowest earnings of this company for the period of the last forty or fifty
1727 years.

Q. In arriving at that conclusion did you study the Milwaukee system or the mortgaged divisions?

A. No, I was speaking of the railroad as a whole.

Q. Would it be your opinion that the various mortgage divisions likewise encountered periods of very low earnings during these same two five year periods in question?

A. I assume so. I would rather not express an opinion without having made a study of the various divisions.

Q. You think it a fair assumption, though?

A. I wouldn't like to make that assumption.

Q. Now, I believe that you referred in the early part of your statement to the fact that the estimates of gross revenues were somewhat pessimistic—is that the phrase you used? The Commission's estimates of gross revenues of $126,000,000 odd, I think.

A. No, I think I was referring there to the net figure of the institutional committee, which the Commission apparently used, although not with complete approval.

Q. You didn't think that the figure of gross revenue, though, was unduly pessimistic, did you?

A. It is so close to the figure I have used, there
1728 is not much argument between us. I think you could use either figure and support it.

Q. Well, the figure for 1939 is $126,900,000 of reduction. Actually the figure was what?

A. $106,875,000, I think.

Q. The millions will be sufficient. $106,000,000.

A. It is a little less than $107,000,000.

Q. Would you regard a prognostication of $126,900,000 which eventuated into a net of $106,000,000 as being unduly pessimistic?

A. As being unduly pessimistic?

Q. Yes, as being somewhat pessimistic?

A. I don't quite get the point of the question. The estimate there is over the actual instead of under the actual.

Q. That is right. Therefore, you would not regard that estimate as being pessimistic at all, would you?

A. No.

Q. Therefore your statement that this had been approached by the Commission with a somewhat pessimistic view is not justified by the estimates that were used for the year 1939.

A. Oh, no. I think they have no relation to each other whatever, those two things.

Q. That is your present statement, they have no
1729 relation whatever.

A. Yes.

Q. You stand by your statement that the Commission's estimate is somewhat pessimistic?

A. In my opinion.

Q. In your opinion.

A. This is all a matter of fact as to which there can be honest differences of opinion. My opinion is they were rather pessimistic in their view of the future.

Q. In spite of the fact, and it is a fact, is it not, that the actual gross was $106,000,000?

A. Last year?

Q. Yes.

A. Yes.

Q. I am speaking of that particular year.

A. Yes.

Q. Now the estimate for 1940 was $134,000,000.

A. Yes, that is correct.

Q. What was the actual for 1940, as nearly as you can project it at the present time?

A. Well, that is a matter of guess, perhaps $115,000,000.

Q. $115,000,000 paid so that in fact the estimate there was some $19,000,000 in excess of the fact?

A. Yes.

1730 Q. You would not regard that as being a pessimistic estimate, would you?

A. Let me repeat what I said before, that this comparison you are now making with an estimate which was made several years ago, prior to the depression of 1938, and an estimate which is made now for the future have no relationship with each other whatever.

Q. Would you say that your present estimate for the future was more likely to be borne out by the facts and the estimate that was made in 1937 with respect to the year 1939?

A. Oh, I am not going to make any prediction on that. We make a prediction and then we hope we will turn out to be good prophets. We don't know.

Q. You are, however, predicating a plan of reorganization on estimates being made by you, is that correct?

A. I am not projecting any plan of reorganization of any kind. I am making the best, most honest effort I can to forecast or make a reasonably conservative forecast of earnings.

Q. You ventured an opinion as to the equity of security holders.

A. I made a statement along that line, yes.

Q. And that was a prediction and relates to a plan
1731 of reorganization.

A. This has to do with a plan, but I am not supporting any particular plan.

Q. You did not come here to give a lecture, did you?

The Court: You don't have to answer that question.

Mr. Hoffman: I withdraw the question, your Honor.

Q. You knew you were testifying in a reorganization proceeding.

A. Oh, yes, of course.

Q. And that the testimony was with reference to the distribution of securities under a plan of reorganization.

A. Yes.

Q. And you know in a general way that some of the securities to be issued have 75 and 100 years to run, isn't that correct?

A. Yes.

Q. And you know that as far as the debtor is concerned, that the projection of an equity is based in part on testimony adduced by you; that is correct, isn't it?

A. Let me see if I get that question.

Q. The claim on the part of the debtor, or the stock interest as has been referred to as an equity, including stock interest, is based in part upon the testimony adduced by you.

1732 A. I didn't understand you. I thought they had made that statement long before I had any connection with this particular case.

Q. That is correct, but your testimony supports that claim.

A. Yes.

Q. Now don't you think as a matter of feasibility and

fairness that your prediction of a $20,000,000 and your $126,000,000 gross year should be fixed as to time in the light of the fact that will be a permanent element? What I mean by that is, shouldn't you indicate when, in your opinion, that $20,000,000 net year and that $126,000,000 gross year is likely to come to pass, having in mind we are trying to build a plan of reorganization in part upon your testimony?

A. Yes, for a period of 75 or 100 years, as you say, it would be always more satisfactory if you could identify a particular year. I agree with you on that. I am trying to be just as frank as I can with all of you, but I am not in a position to fix a definite year.

Q. Well, could you approximate any such year?

A. There is no use of my trying to guess on a thing like this.

1733 Q. Let me ask you a question, which you need not answer if you feel that it is unfair.

Mr. Osborn: Your Honor, I object to this line of questioning, because the witness has testified as to just how he bases this year on. He has answered these questions to Mr. Smith. He stated in his opinion that year was not very far off. He stated in his opinion it was not a remote possibility, but when asked what particular time it would occur he said, "I am naturally unable to tell the hour." These questions are repetitious.

The Court: He may answer a few more.

Mr. Hoffman: Do you think it is just and fair in your opinion to ask security holders to take an allocation of securities based upon estimates of gross and net revenues, the dates of the realization of which you cannot prognosticate? I am asking for your opinion.

A. It is not a question of fairness or equity; it is a question of expediency, what you can do and what you cannot do. That is exactly what the Commission has done in every reorganization it has handled. It must do that. It must predicate a plan of reorganization upon some future earnings, as to the exact date of which no one
1734 can be sure at the present time. In other words, we are all working under that same handicap.

Q. Now then, you had a discussion with Mr. Smith in respect to the amount of funded debt at present outstanding. $508,000,000, I believe, was the correct figure.

A. According to the Commission's report, yes.

Q. And you took some issue with Mr. Smith's assumption that the accrued interest should be added to the amount of the debt, if I remember the examination correctly, is that correct?

A. I don't call that debt in the sense it is an interest bearing debt. It is an obligation.

Q. Will you turn to the page of the summary of the Commission on which appears the statement that the only charges on the total debt is $23,739,279. Do you see that?

A. I don't know whether I have the same print, but I am willing to accept that.

Q. Well, I call your attention to page 6877 of the printed record in this proceeding, being the report summary of the Interstate Commerce Commission in this finance docket. I wish you would find the figure of $23,000,000.

Mr. Osborn: What is your question?

1735 Mr. Hoffman: I am asking him first as to whether he agrees on that.

The Court: Has he a copy of the document?

The Witness: I don't seem to have the same print.

The Court: Here is a copy. Look at it and see if you can answer his question.

Mr. Osborn: What page is it on?

Mr. Hoffman: The first page of the summary, 6877 of the printed record in this proceeding.

A. What is your question? "The annual charges on the principal of the debt alone were $23,739,279."

Q. So that then on the basis of the annual charges on the funded debt, without taking into account accrued and unpaid interest, $300,000, would provide insufficient earnings to pay interest in full on the present funded debt, is that right?

A. Yes, that is true.

Q. So that any equity on the basis of earnings which you find for the preferred and common stock must be found by taking from the bondholders some portion of their $23,739,000 a year, is that correct?

A. By reducing the interest charges, yes.

Mr. Hoffman: That is all.

1736 *Cross-Examination by Mr. Orschel.*

Q. In connection with the estimates which you have made of the future prospective earnings, you were present in court yesterday when Mr. Scandrett testified that the

debtor through the trustees was contemplating negotiations on the Kansas City Southern with respect to the Kansas City situation. Did you consider that factor in estimating your net earnings?

A. You mean the building of a new bridge across the Missouri River at Kansas City? Is that what you mean?

Q. Yes, that is what I mean.

A. You mean if there are economies that will flow out of the maintenance and operation of that bridge, did I take that into account?

Q. Yes.

A. No, I did not.

Q. What would the result of that be?

A. To whatever extent that produces economies, it would be addition to what I estimated.

Q. Did you consider also in making your estimate as to the future earnings the fact that the company is acquiring additional new Diesel switch engines?

A. These purchases that Mr. Scandrett spoke of?

Q. Yes.

1737 A. No, I did not take that into account.

Q. But those are the factors which you have in mind, I presume, in reaching the conclusion that the management of the railroad is extremely alert.

A. Yes, and they are the factors which lead me to say, as I said a number of times, I think my estimate of future reductions in expenses are conservative.

Q. And that the policy of adopting methods of modernization will, of course, result in increasing the income of the property?

A. Yes, that is true, in my opinion.

Q. In connection with the interrogation which was made of the various factors with relation to wages, rates, volume of traffic and the like, did you give any consideration to the question of consolidations and coordinations?

A. You mean consideration in the sense of making allowance for them in my answer?

Q. Yes.

A. No.

Q. Is it not true, Doctor Parmelee—I am not sure it is—in the 1938 report, and I believe it is in one of the recent reports of the Interstate Commerce Commission, that

1738 the Commission points to the possibilities of rectifying some of the unfortunate problems that the railroads have had through consolidations.

Mr. Smith: If your Honor please, the stock interest which Mr. Orschel represents undertook to get the Commission to open up the proceedings to receive a plan based upon some claim of elaborate consolidations if authorized.

The Court: Do you object on the ground it is not cross-examination?

Mr. Smith: Yes.

The Court: Objection sustained.

Mr. Orschel: I am not talking about consolidations.

The Court: What are you talking about?

Mr. Orschel: I used the word consolidation in a particular sense. I have more particularly in mind coordination and abandonments.

The Court: That means practically the same thing. I still sustain the objection. Do you want to ask him any other questions?

Mr. Orschel: No.

The Court: Do you want to ask any other questions?

1739 *Redirect Examination by Mr. Osborn.*

Q. Dr. Parmelee, Mr. Smith asked you to read from the report of the Commission on page 6859. I think he asked you to read it aloud, in which the Commission sets out the proposed debt and capitalization of the corporation, is that correct?

A. I think he read it himself, yes.

Q. He asked you if you had any comments to make on that statement of the Commission. Now, as I recall, when I asked you this morning whether or not this property would stand a bonded indebtedness of approximately 50 per cent of the valuation placed by the Commission on this property, the elements of value, you said you thought it could. In the light of your answer this morning, will you please reconcile what you have stated to Mr. Smith and what you said to me.

Mr. Smith: Objected to as cross-examination of counsel's own witness, not redirect.

The Court: If there is some misunderstanding here, if there is something that should be reconciled, I think the witness should be allowed to do so on redirect.

A. The total amount of fixed interest and contingent interest debt referred to here by the Commission is ap-

proximately $224,000,000, and my answer to you, I
1740 think in connection with a ratio of interest bearing debt to value was that it might go as high as 60 per cent of the principal, to 50 per cent; as a very reasonable minimum.

Q. That was 50 or 60 per cent of what figure?

A. 50 per cent of the $653,000,000 which we found in the Commission's report as one statement of elements of value, which would be about $400,000,000.

Q. You testified, I think, that you would prefer to have the debt slightly less than $400,000,000.

A. Yes. I put 60 per cent as an outside maximum. I would prefer 50, and 50 per cent of $653,000,000 would be in around figures $325,000,000, which is $100,000,000 more than the $224,000,000 referred to by the Commission.

Q. Mr. Parmelee, if you were asked as an expert on reorganizations, having appeared in three reorganizations of class 1 railroads, and having apparently studied the railroad industry for a period of twenty-five years, whether an allowance of $224,000,000 new debt, or an allowance of, as you say, something less than $400,000,000 of new debt, against a present outstanding debt of $508,000,000, which, in your opinion, would be the more fair and equitable method of allowing for debt?

A. Well, of course I would try, in the light of the present debt, to work out a plan which would give the
1741 present creditors a just proportion of the new debt, that was reasonable and advisable, so that I would properly select, if I were selecting between $224,000,000, the Commission's figure, and $325,000,000, which would be 50 per cent of the elements of value, I would rather select the $325,000,000, if it could be worked out in a reasonable plan.

Q. And you would think that an allowance of that $325,000,000 figure would be fair and equitable?

A. I think so.

The Court: Isn't that about what the Commission recommends?

Mr. Osborn: They recommend an allowance of $228,000,000.

The Court: That all sums up to about what you are talking about.

Mr. Osborn: That is correct.

The Witness: That brings up preferred and common stock, of course.

Mr. Osborn: Q. I would like to ask you this question: Is there any advantage to a railroad corporation in having a moderate debt, a debt of 50 to 60 per cent of its total value? Is there any advantage with regard to taxation?

A. Yes, it is an advantage in respect to taxation,
1742 which is probably a very material one at the present time, because of the fact that your interest on that debt can be deducted from your income before you arrive at the net on which taxes are paid, which is not true of dividends on stock, and the tax rate is now, I believe, around 20 per cent, the income tax rate.

Q. So that there would be an actual saving to the railroad corporation on an allowance of $100,000,000 more debt under a reorganization plan?

A. Yes, assuming the same amount of money would otherwise be paid out in dividends.

Q. Dr. Parmelee, Mr. Smith asked you to go back to 1916 and discuss with him the wage rate increases that took place then. Was that the Adamson Act?

A. The Adamson Act passed in 1916 became effective on January 1, 1917.

Q. Was it true that after the passage of these wage rate increases that both the gross and net income of this railroad in subsequent years materially increased?

A. Yes.

Q. So that would you view with alarm in the future the raising of wage scales as being necessarily dependent on an increase in net income?

A. Well, that is a rather general question to an-
1743 swer. It all depends, of course, on what you have to meet the wage rates with, I mean, what revenue you have. All those things have to be taken into consideration in relation to each other.

Q. The raising of wage rates would not necessarily tax the net income available for income on this road, would it?

A. No, not standing by itself necessarily.

Q. I believe you testified in making your study and estimate of the prospective year, you have particularly concentrated on the period of 1931 to 1940; is that correct?

A. 1932 to 1940.

Q. Mr. Smith then very properly called your attention to instances in that period of time where, although the

gross had increased, the net had also decreased and not followed your formula.

A. Yes, that is true.

Q. Then he picked out instances in other years where, although the gross had increased, the increase had not followed through to the net. What is your explanation of these divergencies from your formula?

A. Wherever there is a divergence from the formula, there is almost always an explanation of some sort.

Q. Would you explain the 1935 and 1936?

1744 A. 1935-1936 were the years of the wage reduction to which I referred in answer to one of Mr. Smith's questions. That was largely the answer to that. If we had gone another year beyond that 1935 to 1936, when there was no change in the rates between those two years, we would find the situation entirely different.

Q. So you would say your formula will be checked at times by unusual happenings in the railroad industry, such as social security tax or abnormal wage increase?

A. Oh yes. Those things come up from time to time to upset the working of any formula, but it still remains as established. A reasonably clear formula will work, and it has been worked in the last three or four years very remarkably.

Q. To what do you ascribe, in addition to the fact that this railroad has had additional amounts of money to spend in the past five years, to what other factors do you ascribe the increase in efficiency which has brought about a greater recovery in gross?

A. I think the matter of new plant through capital additions, as set out in the exhibits before the court, may have had a good deal to do with it. There was some discussion of that in Mr. Scandrett's testimony yesterday, as to locomotives, freight cars, the addition

1745 to equipment and a great many other similar things.

Q. Dr. Parmelee, Mr. Clay referred to the effect of the cessation of hostilities as being one of the fates of this road. What would be the effect on this road of the closing of the Panama Canal, or anything to prevent shipments through the Canal?

A. That is one thing that would face the road.

Q. Wouldn't it very materially increase the revenues of the road?

A. Yes, I think it would.

Q. Mr. Hoffman asked you a question as to whether in your opinion, speaking about a reorganization, whether

it was fair and equitable to predicate the issuance of securities on an estimated future earnings, did he not?

A. Yes.

Q. I would like to ask you whether in your opinion it is fair and equitable to confiscate issues of securities on an estimate of future earnings?

A. I hardly know how to answer that question. You mean to wipe the securities out entirely?

Q. To wipe the securities out entirely on an estimate of earnings.

A. I think that any body or regulators ought to be very, very careful about taking a radical step of that
1746 kind, and should give every benefit of the doubt to the security holders, even to the extent of giving them no par common stock which may have little or no value, and certainly won't have if the company does not make good in the future, but it does no one any harm to issue them, because they have no standing if there are no earnings behind them. If there are any earnings behind them, then they would have a value.

Q. When you took your picture of a prospective year of $21,000,000, you did not account for certain happenings that might take place in the railroad industry which would add to that figure, did you?

A. There are some things, some developments which might be foreseen which would help, and some which would hurt. It is pretty hard to balance them over a period in the future and reach a general opinion as to what the balance would be.

Q. In your opinion is it as likely that these earnings will be exceeded during the period of the next ten years as it is unlikely that they will be exceeded?

A. I think I have leaned on the side of conservatism and I use that very desire to make an estimated statement. I think the greater likelihood is that they will be exceeded than otherwise.

Q. Would you regard it as a remote possibility
1747 that these earnings would be exceeded in the next five years?

A. No, I would not regard it as a remote possibility. I think we are approaching that point very rapidly right now.

Mr. Osborn: That is all.

Mr. Smith: May I have just a moment to ask a question?

The Court: Go ahead.

Recross Examination by Mr. Smith.

Q. Out of this $20,000,000 that you have discussed here, the plan would provide that two and one-half millions of that would go to A and B fund.

A. Under the Commission plan, yes.

Q. And under the plan the Commission could at its discretion take out another two and a half, or a total of five million dollars?

A. Yes.

Q. So that of that fund, the total would be reduced to $7,300,000 that would be applicable to interest.

A. Yes.

Q. If the management acted to take the other part of the fund, it would be reduced to $15,000,000.

A. Yes.

Q. It is seventeen-five and the $15,000,000 which
1748 you have to consider in connection with that $29,000,000.

A. You are opening up a new question of capital. I don't like to talk about capital.

Q. But it is in there?

A. Yes, it is in there. I have not compared the twenty million nor the Commission's interest charges at all.

Q. If you take the twenty millions and this plan operated, it would be reduced from two and one-half to five million?

A. Under the plan, yes.

Q. And the document would be put in there for the twenty-nine million carrying charge.

The Court: What about the twenty-nine millions?

Mr. Smith: It is based on 4.7 per cent which is the average interest rate which the company pays.

The Court: But in the plan the Commission suggested they have not said anything about twenty-nine millions.

Mr. Smith: That is based on the basis of the present amount of $629,000,000 in the present debt, at the rate which the company now pays on its funded debt of 4.7.

The Court: I thought they were suggesting a reduced return on these securities.

Mr. Smith: Well, your Honor, all these different securities or many of them bear different rates, but the
1749 matter I was asking about, that we have got a debt of $620,000,000.

The Court: I understood it.

Mr. Smith: We wanted to get some basis to see what the carrying charge would be. On the present debt and the present rate of interest which is 4.7.

The Court: I understand that. I understand that is the plan the Commission suggests.

Mr. Smith: No, it is not.

The Court: That is what I was going to say.

Mr. Smith: You are quite right.

The Court: There is no suggestion of twenty-nine million carrying charge in the plan, is there? I did not see why you were comparing that, when they did not suggest anything like twenty-nine million.

Mr. Smith: I simply used that as a basis.

The Court: What is the reason for putting a question like that?

Mr. Smith: To show how far down the equity is when it takes twenty-nine million dollars to service the present debt. It is only in that connection that it is considered.

The Court: All right.

Mr. Osborn: I will have to correct one question Mr. Smith asked.

1750 *Redirect Examination by Mr. Osborn.*

Q. Your estimate of $21,000,000 does not take into account the two and one-half million dollars that the road has been recurrently collecting in property abandonment and salvage?

A. On road refirements and salvage, that is correct.

Q. It does not take those into account.

A. It does not take those into account.

Q. So that that figure would be increased to $22,000,000.

A. Between twenty-two and one-half and twenty-three millions.

Mr. Osborn: That is all.

The Court: We will recess until tomorrow at 10:00 o'clock.

Whereupon the further hearing of this cause was adjourned until 10:00 o'clock A. M. September 6, 1940.

1752 (Caption—60463)

September 6, 1940,
10:00 o'clock A. M.

Court convened pursuant to adjournment.

Present:

Same parties as before.

The Court: What is our situation here this morning?

Mr. Nicodemus: We rested yesterday, your Honor.

The Court: What is the rest of the program this morning as far as evidence is concerned?

Mr. Orschel: We have one witness, your Honor.

Mr. Nicodemus: The Preferred Stockholders' Committee is the next one on the list.

W. W. WAKEFIELD, called as a witness on behalf of the Protective Committee, Preferred Stockholders, being first duly sworn, testified as follows:

Direct Examination by Mr. Orschel.

Q. Will you please state your name?

A. W. W. Wakefield.

1753 Q. Your address?

A. Evanston, Illinois.

Q. What is your occupation, Mr. Wakefield?

A. Civil Engineer.

Q. By whom are you presently employed?

A. The Preferred Stockholders' Committee in the reorganization of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Q. Will you please describe your experience in railroad matters as a civil engineer?

A. I was connected with railroads in the engineering departments from 1900 to 1928, and I participated in the location, construction, maintenance, and valuation work on the numerous railroads in the northwest; the Great Western, the Great Northern, Northern Pacific, Milwaukee, Soo Line, and several smaller roads such as the Dan Patch. I constructed and placed in operation a small electric line out of St. Paul.

From 1928 to 1936 I was associated with a consulting engineer in Chicago and participated in several recapture studies on valuation matters, and in 1936 I was associated with Duff and Phelps, security analysts in the City of Chicago, and I wrote reports for investors on a num-
1754 ber of major railroads in the United States such as the Milwaukee, the Illinois Central, the Missouri Pacific, the Baltimore & Ohio, the Alton, Frisco, and I made some studies on the Western Pacific and the Denver & Rio Grande Railroads.

Q. Have you ever been employed by the Debtor?

A. For three different periods, yes.

Q. Will you describe the nature of those respective employments?

A. In 1908 I was in Montana on location and construction and in 1928 I was connected with the valuation department of the Milwaukee for a short period, and last year I accepted temporary employment with the Milwaukee and assisted in the compilation and estimating of their 1940 budget, and the handling of the materials in the 1939 authorizations.

Q. In connection with your work on the 1940 budget did you have an opportunity to examine the records of the company on similar matters for previous years?

A. There were some comparisons made at that time, of course, and some of their running records were carried along and I assisted in compiling those.

Q. Mr. Wakefield, prior to your employment by the Preferred Stockholders' Committee you indicated
1755 that you had made an examination in behalf of Duff and Phelps of the Milwaukee properties. Will you please elaborate on that and indicate the nature of your studies, the amount of time that you took, and the various other elements connected therewith?

A. From January, 1937, until the latter part of March an investigation and study was made of the Milwaukee and a report was compiled. That report dealt with the physical conditions of the property, their method of operation, their traffic and their financial structure. In this I was assisted by Mr. George Phelps of the firm of Duff and Phelps, and Mr. Ausman.

Q. For how long a period was your work in connection with that matter?

A. From January until the latter part of March.

Q. In connection with your work for the Preferred

Stockholders' Committee you have from time to time obtained information with respect to various problems of the Debtor. From what source did you obtain this information?

A. From their files as furnished to me when requested from the various officials of the company.

Q. You have been in close touch with the officials
1756 of the company, have you?

A. Yes.

Q. And at all times you have received full cooperation on that score?

A. Extremely.

Q. Mr. Wakefield, as a foundation for a plan of reorganization which has been promulgated by the Commission, two five-year periods have been used, namely, the period from 1931 to 1935, and from 1932 to 1936. The average annual earnings for the period from 1931 to 1935 were $7,859,000, and for the period from 1932 to 1936 were $8,426,009. In connection with your investigation and duties will you please state whether in your opinion the published earnings of the Debtor in those years form a proper basis to determine the minimum fixed interest requirements for the reorganized company?

A. No, they do not.

Q. Will you please state your reasons for that?

A. I do not believe that the use of the depression years' figures reflecting the operations of the Milwaukee should be given the full weight to reflect the minimum earning power of this company. It is my opinion that the use of the depression year figures showing the results of operation are, within certain limits, proper
1757 for use in calculating the fixed interest obligations that may be assumed by the reorganized company. However, in the use of these two sets of averages, it is my opinion that the year 1932, as recorded, should be eliminated. Railroad operation generally in 1932 was so abnormal as to preclude any right to consideration for any estimate. The railroad traffic from January to June was almost at a standstill. From June until October there was a considerable increase. However, the months of October, November and December,—generally the best months for this carrier—were as low as the first two or three months of the year. Therefore, the management was powerless to predict or prepare for the amount of traffic to be handled, and the expenses were clearly out

of line with any other operations of this carrier in its entire history. In addition to the unsettled traffic movements the management of this railroad was faced with a request from public officials to carry along on some thing approaching a normal basis in their employment with the hope that the adverse conditions should correct themselves, resulting in an excess cost for the volume of traffic handled. The recession in business was so sharp and
1758 the future course of economic events was so generally miscalculated that a recurrence would appear extremely unlikely.

Q. Mr. Wakefield, in considering the Plan, your attention has been called to the heading of the Plan from the Interstate Commerce Commission entitled, "Traffic: Earnings." This appears on pages 6905 to 6912 of the printed record. The Interstate Commerce Commission under that heading has taken the period from 1921 to 1938 as the basis for determining the income of the railroad for the normal year. Would you please state whether in your opinion these figures showing income available for payment of interest during this period correctly state the actual earning capacity of the Debtor?

A. I have made no study of revenues but it is my opinion that the gross revenue of the company apparently reflects an average or running record of the business producing capacity of this carrier. However, the income available for payment of interest as reported by the carrier and then modified by the Commission does not, in my opinion, clearly show the real possibilities of earnings in the future. It must be remembered and noted that
1759 the income of this carrier was affected by several conditions during this entire period. In the first place, the Milwaukee properties required considerable adjustment following the period of government operation of railroads. Substantial increases in the cost of operation resulted from the Carmen's strike which occurred in the latter half of 1922. The Terre Haute lines were taken over by the Milwaukee under leases in 1923, and the entire trackage was rebuilt as an operating charge between 1923 and 1928. The period 1925 to 1928 was also affected by the fact of a receivership operation, with the resulting burden of receivership and costs of reorganization. From 1930 to 1934 the company was being operated under depression conditions that resulted in a receivership in 1935. Therefore, in my opinion, the expense side

of the operation from 1923 to 1937 has never reflected the true earning capacity or the operating efficiency. This company has not operated under normal conditions during the entire period. In addition, the entire period from 1921 to 1937, the expenses of operation of the railroad has contained many items of maintenance in excess of normal requirements and any estimate of future normal year expense would of necessity require a restate-
1760 ment eliminating the extraordinary expenses due to the betterment of the property.

Q. Will you kindly develop that last point that you have made?

A. For instance, the cross ties laid in replacement from 1923 to 1930 range from about 3,250,000 ties per year to 4,500,000 ties per year, with an average of 3,814,073 annually in replacement.

From 1931 to 1939 tie replacements totaled from 1,700,000 in 1938 to a maximum of 3,500,000 in 1935, or an average of 2,510,314 ties replaced annually. This is a decrease of 1,300,000 ties on an average between 1931 and 1939 and those ties replaced between 1923 and 1930.

The large replacement of ties is due primarily to the program of the Debtor in replacing untreated ties with treated ties. The reason for this program was, of course, to reduce this maintenance cost for the future, in view of the fact that the life of a treated tie is approximately twenty-five years, whereas the life of an untreated tie is only thirteen years. In carrying out the program, a greater number of ties were removed and replaced than necessity actually dictated, with the result, of course,
1761 that maintenance charges on this score were far in excess of actual requirements. The cost of replacing an untreated tie is, for material cost, 57 cents and labor cost, 25 cents, with a total of 82 cents. The cost of the treated tie is, for material cost, $1.29 and labor cost 25 cents, with a total of $1.54.

Therefore, not only was the property being improved at a rate greater than necessity demanded, but at a cost of approximately twice as much as sheer necessity required.

However, although the expenses of this tie replacement problem have been greater than normal requirements during the entire period, the program has been continued in full force during the entire period of receivership, and the tie replacements which have been made in the period from 1935 up to and including the present time are still

substantially in excess of what the normal future requirements for maintenance will be.

Q. Will you again, Mr. Wakefield, develop the point which you have raised concerning the normal tie maintenance for the years after 1939?

A. To develop the tie situation as of 1939, the record taken from the report to the Interstate Commerce
1762 Commission was considered. Tie replacements, both treated and untreated, and the total ties replaced were compiled. This compilation discloses that of the 43,300,000 cross ties estimated in place as of December 31, 1939, of which 33,300,000 are treated and 9,200,000 are untreated, the tie replacements of treated ties from 1925 to 1939 amounted to 33,500,000 ties.

Therefore, all treated ties in place in 1939 were from one year to fourteen years old. The untreated ties, amounting to 9,200,000, were replaced by a total of 9,800,000 ties between 1926 and 1939, and therefore are from one year to thirteen years old.

As I have previously stated, in my opinion the thirteen years of life of the untreated ties, as disclosed by the replacement of these ties in the thirteen year period, very nearly agrees with the experience of other railroads as to the life of untreated ties. It is estimated by many railroads, and it is my opinion, that the life of a treated tie is at least twenty-five years. Therefore, the treated ties replacing untreated ties in the past fourteen years would mean that an installation of a treated tie in place of an untreated tie doubles the life of the tie and that the remaining life of the 33,500,000 ties of from at least
1763 twelve to twenty-five years represent a maintenance expenditure in the past years anticipating future maintenance expenses. In other words, the heavy past burden will be followed by a substantial reduction on this item during the entire twenty-five year future period.

In carrying the program of tie installations along the line of complete installation of treated ties and equalizing the replacement of treated ties over treated ties and the elimination of untreated ties under a regular program, will require the installation of approximately 2,000,000 ties annually until 1953, and thereafter tie replacements would consist of 1,600,000 ties annually.

In considering the operating expense in connection with tie replacements and considering the material cost of ties as recorded in the reports to the Interstate Commerce

Commission, and assuming the cost of installation of a tie at 25 cents, the operating expenses for tie replacement from 1934 to 1939 ranged from a low of $2,400,000 in 1938 to a high of about $5,300,000 in 1935.

Considering the above replacement program between 1940 and 1953, which consists of a betterment by the
1764 elimination of 9,300,000 untreated ties to be replaced by 9,000,000 treated ties, the average operating expense in connection with replaced ties would be $2,400,000 annually, and tie replacement after 1953 would amount to approximately $2,400,000 for the 1,600,000 ties annually required thereafter.

It will be seen, therefore, that in considering a normal year's expense the normal charge for tie replacement should never exceed $2,400,000 until 1953 and will be maintained at about that level in the future. This should be compared with the excess expenditure from 1935 to 1939 for tie replacement during the receivership. During this period tie maintenance expense was $5,900,000 in excess of future requirements.

Q. Mr. Wakefield, in that connection you have simply taken the figures for the period during the receivership. As I understand your testimony, this program of tie replacement, which has been carried on with the hope of developing the property for the future, was also being carried on prior to the receivership period.

A. That is true, but I only used the operating expenses for tie replacement during the receivership to illustrate the differences expended during that period over a normal maintenance charge.

1765 Q. And it is your opinion that that program resulted in almost $6,000,000 additional expenses during the receivership period which were not necessary for normal requirements.

A. Yes, that is true.

Q. Are there any other similar items of maintenance which in your opinion indicate that the maintenance charges for the Debtor include non-recurring expenses?

A. A consideration of the items of expense chargeable to maintenance of way shows two classes. One class includes replacement of material and the labor charge attendant thereto, which prolongs the life of the entire track structure.

The other class consists of the normal requirement of maintenance such as cutting weeds, clearing ice and snow,

piecemeal repairs to buildings, injuries to persons, insurance, stationery and printing, and so forth, and are recurrent annually.

In dividing the expense items for maintenance of way on the Milwaukee for the years 1935 to 1939, into these two classes, we find the items of maintenance containing more or less non-recurrent replacements including bridges, trestles, and culverts, ties, rail, other track ma-
terial, ballast, and the labor charge of track laying
1766 and servicing, crossings and signs, signals and interlockers, roadway machines, small tools and supplies, and the operating charges or assessments for public improvements, amounting to about $11,700,000 in 1935.

The same division of expense during the remaining receivership shows that the more or less non-recurring items amounted to $12,000,000 in 1936, $10,400,000 in 1937, $8,000,000 in 1938, and $11,700,000 in 1939.

The ordinary maintenance charges in the same period amounted to $5,700,000 in 1935, $6,600,000 in 1936, $7,000,000 in 1937, $6,000,000 in 1938, and $6,600,000 in 1939, and the total maintenance of way in the years 1935 to 1939 amounted to between $17,000,000 and $18,600,000, except for the year 1938 of $14,800,000.

It is therefore apparent that of the estimated $18,000,000 for maintenance of way, apparently used in the consideration of a normal year, there is contained a normal maintenance cost of between $6,000,000 and $7,000,000 and that from $10,000,000 to $11,000,000 is accepted as taken from the records as the cost of partially non-recurring items which, as in the case of ties, shows that the normal
requirement for these items should be radically re-
1767 duced.

As I stated before, from $1,000,000 to $2,500,000 of this expense should be eliminated in the years following 1940 for the cost of tie replacement and a further decrease in operating expense of $1,000,000 will result after 1953.

The same is true of the other items in this same category. Bridges, trestles, and culverts have been remodeled and reinforced to sustain heavier loadings and higher speed. Rail replacements consisting of heavy rail are protected by the track against recurrent relays, and other track material, for which charges from $700,000 to $1,100,000 have been expended annually, including placing of tie plates, installing reinforced remodeled angle bars, installing anti-creepers and rail braces, and other new de-

velopments in method of maintaining track. Ballast has been added where necessary. Crossings have been protected by modern devices, all involving operating expense. Signals and interlockers have been constantly improved with train control and automatic interlocking signals installed, and a sizable amount of money, amounting to approximately $400,000 to $500,000 per year has
1768 been expended between 1935 and 1939 to improve railway machines and small tools which enable economies to be obtained in the labor involved in maintenance. In my opinion a full analysis of all these operating expenses should be made, and the proper adjustment to maintenance of way must be made if the expense item for a normal year is to reflect the possibility of earnings of this railroad.

The improvements in conditions in the shops and engine houses of this railroad by the installation of full electric operation and the betterments, chargeable to maintenance, are reflected in the capital expenditures for shops and engine houses of from $200,000 to $700,000 a year in the period from 1935 to 1939, and the operating expenses from $460,000 to $670,000 annually.

Similar improvements looking to future savings have been made in the maintenance of equipment. No specific estimate of savings has been made, but the program of completing stoker installations on approximately 390 freight locomotives and 28 passenger locomotives very nearly complete the installations necessary on all power not billed for retirement.

The completion of the installation of cast iron side truck frames, the installation of improved car doors, the
1769 installation of improvements in braking, are practically completed on all freight equipment destined for several years of service.

The remodeling of passenger cars for improved washrooms, heating equipment and air conditioning, amount to a total of 298 units, and probably complete a program of remodeling on the necessary old equipment to be used on main lines. Such equipment combined with the newly purchased equipment provides ample equipment for all services.

Many of the new improvements will directly reduce operating charges. As Mr. Scandrett testified, the cost of operating Diesel switch engines purchased in the last few

years have thus far produced substantial reductions in fuel and water costs.

Q. Mr. Wakefield, as I understand your testimony, the adjustments which have been made, or expenses which have been incurred, have been for the purpose of fitting the road for the higher speed developed by the streamline trains, and various other modern methods which the railroad has undertaken.

A. Yes.

Q. And therefore, that work having been substantially developed, the necessity for these maintenance
1770 charges, so-called, will not continue in the future in your opinion?

A. That is right.

Q. Mr. Wakefield, are you familiar with any traffic agreements which have been made with other railroads and which have had effect on the operating charges of the debtor, and will have in the future?

A. The pooling of ore traffic with the North Western and discontinuing the use of the Escanaba Railway I believe in 1937 changes the operating conditions. Maintenance charges for the maintaining of the Escanaba Railroad were discontinued.

The agreement for the pooling of traffic means that an operating charge for part of the cost of maintaining the North Western line will be charged to the Milwaukee and therefore your operating condition and expense has been changed.

Q. Has that had a material effect, or do you anticipate it will have a material effect on the material earnings of the company?

A. I could not say, Mr. Orschel, as to the amount. The net earnings as paid by the North Western to the Milwaukee is the only figure that I have seen.

1771 Q. Mr. Wakefield, do you know of any other similar traffic agreements which are under contemplation or which are to be put into effect which will have a similar result on operating expenses?

A. There have been studies on the Milwaukee and other railroads made for a number of these,—well, since 1934. I believe that some of them are getting closer to completion. I have a list here of thirteen.

Q. Just what are these?

A. These are the joint use of one railroad's track and

the elimination of the other track. It is an operating economy pure and simple that is being considered.

Q. Will you please state what they are and the amount of money involved in connection with each of them?

A. What I have is the original tentative estimate.

The Tunnell City to Medary, a traffic agreement with the Chicago & North Western, involving $70,410.

La Crosse to Winona, $66,400.

Aberdeen to Huron, $68,600.

Wisconsin Rapids and Port Edward to Nekoosa, an agreement with the Soo Line, $34,610.

1772 Demming to Bellingham, Washington, an agreement with the N. P., $10,800.

Manhattan to Three Forks, with the N. P., $8,200.

Milton Junction to Afton, with the Chicago & North Western, $8,800.

Missoula to St. Regis, with the Northern Pacific, $68,000.

Pastville to Decorah, with the Rock Island, $50,500.

Seattle to Bellingham, with the Great Northern, $15,000.

Silver Bow to Garrison, with the Northern Pacific, $48,800.

Terry to Forsyth, with the Northern Pacific, $84,000.

Three Forks to Butte, with the Northern Pacific, $43,000.

Q. And it is your opinion, Mr. Wakefield, that if these types of traffic agreements can be put into effect it will have a direct and immediate effect upon the earning capacity of the debtor?

A. It will have an immediate cash effect.

Q. By reason of elimination of expenses?

1773 A. Yes.

Q. Are there any other similar projects under contemplation by the Debtor which will have a similar affect on operating expenses?

A. There were about 80 joint operation of station facilities that were considered. I have no estimate of the savings involved, but they have been considered and I really do not know the status of them at the present time.

Q. Do you know how many of such matters there were?

A. Approximately 80.

Q. Has there been any consideration given to matters of abandonment of lines no longer economically profitable for operation?

A. I am not familiar with the program concerning future abandonments. In the last two years there have been two lines of considerable length that have been abandoned.

namely, the Turkey River line, and the LaForge line. Of course, the abandonment of a line would immediately change your operating expense.

Q. You have given consideration to a plan of reorganization which contemplates the consolidation of the Debtor and the Chicago & North Western Railway. Will you kindly give the possible savings which would
1774 result in some such a plan?

The Court: Now listen, how much further are you going to go on with this matter? You folks, are you going to object or are you going to sit there?

Mr. Oliver: I object to any question having to do with the consolidation.

The Court: I think you people down there should be interested in conducting this case in an orderly fashion. I am not going to let you folks just sit there and let them go on forever. I am not going to do that. I think the least you folks could do is to be helpful to the Court. Now, they are going into consolidating this road with another road. The objection is sustained.

Mr. Orschel: Your Honor, what we are trying to establish by the testimony of Mr. Wakefield is that there are a great many matters which will result in economies of future operation of this Debtor.

The Court: Well, my friend, I am not interested in having you go into what might result from a combination of this railroad with some other railroad. The objection is sustained. Why wasn't this witness presented to the Commission?

1775 Mr. Orchell: He was.

The Court: And this is the same testimony all over again?

Mr. Orchel: No, it isn't, your Honor.

The Court: Why wasn't this testimony given here given before the Commission?

Mr. Orchel: Your Honor, to be perfectly frank with you, we did not have this information. This information came as a result of Mr. Wakefield having been employed by the railroad in 1939. The hearings were concluded in March, 1938. We did not have the information available to us. As a matter of fact, I must explain to your Honor that the facilities for the Preferred Stockholders' Committee have been extremely limited.

The Court: Why?

Mr. Orchel: It has been very difficult to work without

funds, your Honor, and we have had practically none to work with. We are trying to do the best we can to protect the interests of approximately 16,000 stockholders having an investment of $119,000,000.

The Court: Well, do not the attorneys for the Debtor represent practically the same interests that you represent?

Mr. Orchel: Yes, that is true, but we have not
1776 been able to compile this information prior to this time. In the first place, we did not anticipate the type of normal earnings that the Commission was going to establish, and what we are trying to point out here is that the Commission has not made an examination as to what the future expenses of the railroad are going to be. They have simply taken an estimate of what the future revenues, gross revenues, and what the earnings will amount to, but they have not examined into, so far as the record shows, the possibility of economies in operation, which will result from this point on.

The Court: Did you make that objection before the Commission?

Mr. Orchel: No, I did not, your Honor.

The Court: Why not?

Mr. Orchel: I must be perfectly frank with you. This information is information that we did not have before and it is information that we have developed for the first time now. I think it is important in the decision of the case. That is all.

Cross-Examination by Mr. Oliver.

Q. Mr. Wakefield, do I understand you did not
1777 take the same character of detailed analyses and study prior to 1920?

A. No, I did not.

Q. Then, as far as your studies of analyses would disclose, the Milwaukee Railroad was never operated under normal conditions.

A. Well, I do not know as to that prior to 1920.

Mr. Oliver: That is all.

The Court: From 1920 on you say it has not been operated under normal conditions?

The Witness: There was a series of events that happened to this railroad, largely through changes of operating conditions; the inclusion of the Terre Haute line with

a re-arrangement of interchange, and the fact that they took a line that had to be rebuilt to serve their purpose, and then the receivership was caused by, I believe, the Western coast line's construction, and the eventual catching up with it, and they were put into receivership in 1925, and then the depression followed on top of that.

Cross-Examination by Mr. Clay.

Q. Mr. Wakefield, you are not in the employ of the Milwaukee at the present time.

1778 A. No, sir.

Q. I believe you said you were at one time.

A. Yes.

Q. When did you leave the employ of the Milwaukee?

A. In September, 1939.

Q. How long were you with them?

A. Just on a temporary authority. It was about six months' authority.

Q. Well, you have been employed by them for only about six months during your whole professional career?

A. No, I was with them for a period in 1928 and 1939.

Q. Well, you mean you just did some special work for them in 1928 and 1939, and you were not on the payroll?

A. No, in 1928 I completed a study of costs for valuation purposes on the Norfolk & Western and then I came back to Chicago and worked for the Milwaukee until I voluntarily left there to work with a consulting engineer.

Q. You left there in 1928?

A. Yes.

Q. Have you made any recent inspection of the railroad?

A. Well, I went over the Milwaukee, practically a good share of its lines, in 1937.

1779 Q. That is the only inspection you made?

A. Yes.

Q. You did not make any inspection at the time this road went into bankruptcy, did you, either immediately before or immediately after they went into bankruptcy?

A. No.

Q. Now, you are an engineer, are you?

A. I am.

Q. Is it possible to determine wherever there is deferred maintenance from the books of that company?

A. As a rule, yes.

Q. But the only satisfactory way is to actually go over the road, isn't it?

A. Yes.

Q. The only satisfactory way is to actually go over the road to see whether the road is in good condition and properly ballasted, and so on?

A. Yes, that is true.

Q. So you made no inspection, either immediately before or immediately after the bankruptcy, and consequently you really cannot say how much deferred maintenance there was, can you, as of the date of the bankruptcy?

1780 A. No, only as to the inspection in 1937. I said in my report at that time that I did not believe there was any deferred maintenance on that railroad as a result of the inspection.

Q. Now, you were here yesterday. You heard some of the testimony that this road even back in the years of 1927 and 1928 was having difficulty earning enough money to pay its interest.

A. Yes.

Q. Of course, that situation steadily worsened, didn't it, in the years 1928 and 1935, when the road went into bankruptcy? You testified yourself that the bottom year was 1932.

A. Yes.

Q. Now, isn't it reasonable to assume that in the endeavor to keep out of bankruptcy and pay interest that maintenance was practically cut down?

A. It might have been, but I have my doubts about it very much. The examination of installations on new materials replacing old does not disclose that fact.

Q. Well, you really cannot say. You did not go over the property on the date of bankruptcy. You do not know, do you, how much deferred maintenance there was?

1781 A. No.

Q. Consequently, if there was a large amount of deferred maintenance at that time the money that has been spent during the bankruptcy was partly to improve a bad physical plant, wasn't it, to remove the deferred maintenance?

A. Well, as I showed here, I do not presume to state as to the entire maintenance but I used the tie situation as typical. The tie situation has disclosed by the number of ties used in replacement that it has been a progression.

Now, we know from the record that ties in place today are from one to fourteen years old.

Q. Well, you have been railroading a long time. Isn't it customary for the railroads to depreciation on road and structures at all?

A. No.

Q. Take, for instance, a tie that has been in for fifteen years, it may be rotten, broken in two, it is still carried on the books, isn't it, at the original cost plus the cost of installation?

A. Yes. Your original cost is apparently the original tie you put in.

Q. Now, if the roads depreciate their roadway
1782 wouldn't the depreciation be a charge against operating expenses so that if there had been a depreciation of this road, as is customary with other industrial concerns, their earnings might have been very much less, might they not?

A. (No response.)

Q. Certainly they would be.

A. They might have been less.

Q. The depreciation would be an operating expense and would have reduced the earnings, wouldn't it?

A. That would be if you were charging depreciation.

Q. Well, during the entire period as to which you have testified, this road has never depreciated its roadway, has it?

A. No.

Q. And consequently it has never depreciated, has it, its bridges, trestles, and culverts?

A. No.

Q. Nor its rail.

A. No.

Q. Nor its actual roadbed. The ballast washes away, doesn't it?

A. It does, and it is replaced by an operating charge, yes.

1783 Q. It has never depreciated its signal or interlocking plants, has it?

A. No.

Q. Nor its shops or engine houses, has it?

A. No.

Q. The only part of the physical property of this road which has ever been depreciated is the rolling stock, isn't it?

A. That is true.

Q. Now, a proper depreciation might wipe out all of the earnings, might it not?

A. Well, it would not wipe out your earnings. You would have an offset factor in there so that if you had a depreciation reserve to rebuild this property back you would be maintaining this property and your operating charge would not occur as it has. In other words, you would not have both the operating charge and the depreciation charge.

Q. Well, coming back to this, you had been testifying particularly as to what has been happening during the period of bankruptcy, 1935 to 1940.

A. Only as to the money expended during that period, yes.

Q. Exactly. Now, there has been that testimony
1784 particularly by Mr. Parmelee as to the improved efficiency of the road. Isn't it to be expected that if the plants and structures are modernized and the deferred maintenance is cured, that that will be reflected in the operating ratio?

A. That is true, but this is in addition to what Mr. Parmelee testified to.

Q. Well, have you made any particular study of any aspects of this case except the maintenance aspect?

A. No.

Q. You did state, perhaps inadvertently, that the Terre Haute was leased in 1923.

A. That statement was made from memory only.

Mr. Orschel: He said he was making that statement from memory only.

The Witness: I knew it was in that period some place.

Mr. Clay: Q. It appears from 131 I. C. C., page 63, that the lease was effective July 1, 1921.

A. That may be so. I was not down in Chicago. I was in St. Paul at that time. I knew it was in that period some place.

Q. And you have not endeavored to inform yourself about such a matter?

1785 A. I did not have the record there, no.

Q. Now, you mentioned possible savings from consolidation projects or coordination projects. Is it possible to put any of those into effect without the approval of the Interstate Commerce Commission?

A. I think not.

Q. Isn't it customary for the Interstate Commerce Commission to hold a hearing on any objections from labor or communities?

A. That is true.

Q. No approvals have been obtained, have they, from the Interstate Commerce Commission to put into effect any of these projects you have mentioned?

A. The pooling of the ore traffic has been approved.

Q. Well, you mentioned thirteen others.

A. Well, I think there are several of them that are in the process of hearing. I could not say exactly the status of them at the present time.

Q. You do not really know, do you?

A. No, I do not know exactly the exact status of any of them.

Mr. Clay: That is all.

Redirect Examination by Mr. Orschel.

Q. Mr. Wakefield, I have just one question. You 4786 examined the report in this case, did you not, which showed that in 1935 testimony went into the record to show that there was practically no deferred maintenance of the property and that it was in good shape at the time?

Mr. Smith: I object to asking what is in the record. I object to that on the ground that it is immaterial.

Mr. Orschel: Q. Did you examine the R. F. C. report in respect to the Milwaukee Railroad?

The Witness: I did.

Mr. Clay: Pardon me, what do you mean by the R. F. C. report?

The Court: What difference does it make? He asked him if he examined it and he said yes. I read the Tribune this morning. What difference does it make?

Mr. Orschel: That is all.

The Court: Is there any other testimony to be put in by anybody?

Mr. Ballard: If your Honor please, there are four or five of us and we have made our plans together and we will offer our evidence together. Mr. Peter was expecting to call the first witness. If we may have just a moment we will get Mr. Peter.

Mr. Marsh: If the Court please, the Milwaukee &
1787 Northern are not objectors to the Plan although some of our bondholders are, and we should prefer to put in two or three exhibits that we have after the evidence of the objectors is closed. Our witness is Mr. Severs.

Mr. Hoffman: Our questions will relate to the exhibits we want to put in. On the schedule the Terre Haute was to go ahead after the Milwaukee & Northern. We have no objection to their going on but we want to reserve our rights to put on our evidence.

Mr. Whitlock: Well, the order is that the Debtor is now concluded and the preferred stockholders are now concluded. The next in order is the adjustment bondholders.

Mr. Abrams: We will put in very little, your Honor.

Mr. Whitlock: The next is the fifty-year 5's.

Mr. FitzGibbon: On behalf of the fifty-year 5's, we have but one exhibit which we propose to offer through Mr. Severs. It relates to the R. F. C. indebtedness and the collateral pledged therefor, and under the refunding mortgage. It will take but a few minutes and its purpose is merely to consolidate the record on this point and bring the evidence up to date.

1788 The Court: Who is next?

Mr. Sykes: The generals.

Mr. Whitlock: After the generals come the Milwaukee & Northern.

Mr. Hoffman: I think we should wait in examining that because in examining the printed record we find some discrepancies between the earnings and the reports.

Mr. Oliver: We are supporting the Plan as is.

The Court: Is Mr. Smith allied with you and Mr. Burgess?

Mr. Oliver: That is correct.

The Court: And this is the Terre Haute group.

1789 Whereupon, the Terre Haute Group, to maintain the issues on its behalf, introduced the following evidence, to-wit:

Mr. Peter: If your Honor please, we would like to introduce some testimony on behalf of the Terre Haute Group.

Mr. Oliver: If your Honor please, I think it just as well to make known our position as to the admissibility of this testimony before they start rather than interrupting counsel later.

The Terre Haute people have consistently, as we understand their position, claimed before the Commission that

the Commission had no jurisdiction of the Terre Haute and they introduced no testimony with respect to the Terre Haute situation before the Commission. We think they should have done so at that time and we object to the introduction of testimony now.

The Court: The record may show your objection and Mr. Peter may proceed with the examination.

Mr. Clay: I make the same objection.

1790 The Court: Let the same objection be noted for Mr. Clay.

Mr. Alsop: I am appearing for the Terre Haute First Lien Bondholders Committee. I simply want to say that Mr. Peter—we hold Terre Haute's bonds together—and we have agreed that Mr. Peter may present the evidence for all of us together, to the extent of earnings and so forth.

The Court: He will present your side?

Mr. Alsop: On these facts. I have another witness to offer on some other details.

The Court: Are you going to assist in the examination of this witness?

Mr. Alsop: I doubt that very much. I leave that to Mr. Peter.

Mr. Ballard: I am in the same situation. This is my evidence as well as Mr. Peter's. I will have two other witnesses for formal details.

1791 J. W. SEVERS, called as a witnes on behalf of the Terre Haute Group, having been previously duly sworn, testified as follows:

Direct Examination by Mr. Peter.

Q. Mr. Severs, you have been sworn in this case previously?

A. I have.

Q. And have you stated your position with the Milwaukee trustees?

A. Yes, sir.

Q. And with the Debtor corporation previously to that?

A. I was assistant comptroller with the Debtor corporation prior to the bankruptcy proceedings.

Q. How many years have you been in the accounting department of the Milwaukee Railroad?

A. Twenty-three years.

Q. Mr. Severs, will you examine this photostat map which I hand you and say whether that is a correct map of the Terre Haute Railroad?

A. Yes. It is a correct map, Mr. Peter, as of the
1792 date that it was prepared. This was taken from our files and photostated.

The Court: Well, it is the map in the record, isn't it?

A. Yes, it is, your Honor.

Mr. Peter: Your Honor, there is some additional detail here and I should like to offer this map as Terre Haute Exhibit No. 15.

The Court: That is a photostatic copy according to the records of the Debtor corporation; is that it?

A. That is right, your Honor.

The Court: Very well. It may be admitted.

(The said document, so received in evidence by the Court, was marked TERRE HAUTE EXHIBIT 15, and is in words and figures as follows, to-wit:

1793 Mr. Peter: Q. Mr. Severs, is it correct that the Milwaukee trustees caused to be kept books of account showing the separate revenues and operating expenses and other income items on the Terre Haute leased line beginning July 1, 1935?

A. That is correct.

Q. Are the books in which those accounts are kept under your jurisdiction?

A. They are.

Q. Have you caused to be made a transcript of the accounts for the years 1936, 1937, 1938 and 1939 as shown by those books?

A. Yes, sir.

Q. Have you copies of that with you?

A. Yes, sir.

Q. Mr. Severs, will you look at the statement which I hand to you and state whether that purports to be a transcription of the Railway Trustees' books of account for the separate operations of the Terre Haute Railroad for the years 1936, 1937, 1938 and 1939?

A. It does; but I should say that the first statement shows the revenues, expenses and net income from
1794 operations of the Terre Haute lines for the years 1936 and 1937 as disclosed by the separate books and accounting records maintained by the trustees since July 1, 1935.

The second statement, just following, shows for the year

1936 revenues, expenses and net income of the Terre Haute lines on a cost of service basis. And the statement following shows the same information for the year 1937.

And here I should like to say that the revenues for the years 1936 and 1937, on the statement previously explained, include revenues from coal and the haul of Milwaukee coal at tariff rates as well as other company material hauled over the Terre Haute lines.

The two following statements identified as being on a cost of service basis are a recalculation or an adjustment of the haul of Milwaukee material over the lines of the Terre Haute on the out-of-pocket cost basis.

Q. Does that same explanation apply to the other years shown in this statement?

A. It does.

1795 Mr. Peter: Your Honor, I offer the statement referred to as Terre Haute Exhibit No. 16.

Mr. Moses: Is this the whole group or just one?

Mr. Peter: That is the whole group. Exhibit 16, your Honor, covers the statements for the years 1936 to 1939, inclusive, and there are two statements for each year.

Mr. Moses: Wouldn't it be better if we could have these numbered separately so that they could be referred to in that manner?

Mr. Peter: Well, I have no objection to doing that.

Mr. Moses: You have got about ten different papers here. If they are all numbered 16, when you ask questions of the witness about Exhibit 16 we don't know what one of the sheets is being referred to.

Mr. Peter: All right.

Your Honor, may I restate the offer, as being Terre Haute Exhibits Nos. 16 to 22, inclusive?

Mr. Clay: Wouldn't it be much better and clearer for the record if Mr. Peter would describe each one of these and would assign a number to it?

Mr. Peter: All right.

1796 Exhibit 16, one page, for the years 1936 and 1937.

Exhibit 17, two pages, Cost of Service Basis for the Year 1936.

Exhibit 18, two pages, Cost of Service Basis for the Year 1937.

Exhibit 19 is for the year 1938.

Exhibit 20 consists of two pages showing the Cost of Service Basis for the Year 1938.

Exhibit 21, one page, for the year 1939.

Exhibit 22, two pages, Cost of Service Basis for the Year 1939.

The Court: They may be admitted. I suppose, Mr. Oliver, you want the record to show that you object to them?

Mr. Oliver: Yes, sir, I do, sir.

The Court: Well, the record may show your objection.

Mr. Oliver: I should have stated first that the Commission said it had no jurisdiction, found it had no jurisdiction.

Mr. Clay: May we take an exception, just for the record?

1797 The Court: I don't think you have to. You may have one if you want it.

(The said documents, so received in evidence, by the Court, were marked TERRE HAUTE EXHIBITS 16 TO 22, both inclusive, and are in words and figures as follows, to-wit:)

1798 Mr. Peter: Q. Mr. Severs, did the Debtor corporation keep a separate record of accounts for the years 1933 and 1934?

A. No, sir; they did not. There was a determination made from the accounts of the Milwaukee Road of the estimated earnings and expenses of the Terre Haute lines.

Q. I hand you a sheet marked Exhibit No. 4 in August 26, 1935, proceedings in this case and ask you whether that is the statement of earnings for the years 1933 and 1934 that was prepared as you described.

A. It is.

Q. Will you state whether there was any record made by the Debtor corporation for any years previous to 1933?

A. Beginning with the leasing of the Terre Haute on July 1, 1921, we started to keep a memorandum record of the results of operating the property. That continued through 1927. Then we discontinued it. And beginning sometime in 1935, or, I should say, during 1935, we developed from the records of the Milwaukee Road the

1799 estimated revenues, expenses and income of the Terre Haute lines substantially on the same basis as we developed the prior period for the years 1933 and 1934.

Q. Did you develop any separate income accounts for the Terre Haute operations for the years 1924, 1925, 1926, 1927, 1928 and 1929?

A. As I stated previously, for 1924, 1925, 1926 and 1927, those were developed in accordance with the basis that was used beginning July 1, 1921, and that record was then dis-

continued. That was what we termed a memorandum record.

Q. Will you look at this statement that I now hand you and state whether that is a correct transcription of the record pertaining to the years that I mentioned?

A. Yes, sir; it is, except, Mr. Peter, I think that you have some statement to make about the year 1935.

Mr. Peter: Yes. I only mentioned up to 1935.

The Witness: I beg your pardon.

Q. And the years shown on this statement that you have before you, 1933 and 1934, are the figures previously mentioned by me as being introduced in the August 26,
1800 1935, hearing?

A. They are.

Q. With respect to the figures on this statement, 1936, 1937, they just happen to be a duplication of the showing in the previous exhibits that you introduced this morning?

A. Yes, sir.

Q. That leaves 1935 to be considered. What statement have you to make with reference to that column of figures?

A. Well, I have this to say, that there is a slight difference in the freight revenues and operating expenses and in the net income to the Milwaukee as shown on the statement as compared with the review of the records that I recently made. In other words, our records indicate that the net income to the Milwaukee for the year 1935 should be approximately $39,000 in excess of what is shown on this statement.

Q. In excess?

A. Yes.

Mr. Peter: Your Honor, I offer the statement last referred to by the witness as Terre Haute Exhibit 23
1801 and ask that it be received.

The Court: Subject to the same objection; the same ruling.

(The said document, so received in evidence by the Court, was marked TERRE HAUTE EXHIBIT NO. 23, and is in words and figures as follows, to-wit:)

1802 Mr. Peter: Q. Mr. Severs, have you made a statement from the records of the Railway Trustees showing Chicago, Terre Haute & Southeastern Railway Company equipment made vacant during the period July 1, 1935, to June 30th, 1940, and not replaced?

A. Yes, sir.

Q. Will you look at the statement I hand you and state

whether that is a correct transcription from the records of the Railway Trustees?

A. It is.

Mr. Peter: Your Honor, we offer that as Terre Haute Exhibit 24.

The Court: Subject to the same objection and the same ruling.

(The said document, so received in evidence by the Court, was marked TERRE HAUTE EXHIBIT NO. 24, and is in words and figures as follows, to-wit:)

1803 Mr. Peter: Q. Mr. Severs, have you made a statement from the books of the Railway Trustees showing the amount itemized of the Chicago, Terre Haute & Southeastern Railway Company corporate expenses for the year 1939 as paid by the trustees?

A. Yes, sir.

Q. Is this a correct statement of what you refer to?

A. It is.

Mr. Peter: Your Honor, we offer that statement as Terre Haute Exhibit No. 25.

The Court: Subject to the same objection and the same ruling.

(The said document, so received in evidence by the Court, was marked TERRE HAUTE EXHIBIT NO. 25, and is in words and figures as follows, to-wit:)

1804 Mr. Peter: Your Honor, that is all I have with this witness at this time.

I should like, however, as part of our evidence, or in connection with the introduction of evidence, to make a motion to the Court for an order making a part of the record in this proceeding the transcript of hearing before Judge Wilkerson on June 20th and June 21, 1938, and the exhibits that were introduced at that hearing.

Investigation in the Clerk's office indicates that one of the two documents of transcript of that hearing is lost. We have carbon copies and can supply it. And the exhibits seem to be missing, too, but they are mostly documentary and I think we can supply those. It will expedite matters to have that record or have that transcript made a part of this record.

The Court: You are just replacing part of the record?

Mr. Peter: Your Honor, I am not sure whether this is a part of the record as such without an order making it so. It is testimony of witnesses and exhibits.

1805 Mr. Ballard: I join, if the Court please, in that motion.

Mr. Alsop: I join in the motion, too.

Mr. Oliver: I am not familiar with the situation.

The Court: I am not either, but as I understand it, there was a record made of the proceedings had before Judge Wilkerson. I take it that is part of the record in this case.

Mr. Burgess: It is not a part of the record on the approval or disapproval of the plan, nor is it a part of the record as it was made up before the Interstate Commerce Commission, your Honor. What it had to do was, that Judge Wilkerson after hearing held that the trustees should not pay the principal of one of these Terre Haute mortgages, the Bedford Belt, which had come due.

I can't see why that becomes pertinent here, as to what was introduced in that proceedings, to be made a part of this record. I don't see what relevancy it has, and I object to it on the ground that it is irrelevant and immaterial. I can't see what it has to do with this.

1806 Mr. Peter: Judge Wilkerson expressed the view at that other hearing, on June 20th, 1938, that that was all a part of the record. Now, this record, as I understand that term, means what has transpired so far as court records are concerned from July 30th, 1935, down to the present time. It is all one case.

Now the only question is whether the evidence as such in that transcript is a part of the record. We do not have such a thing as a Bill of Exceptions in a case like this.

The Court: If the record was in the Clerk's office you would not have to make the motion.

Mr. Peter: Yes. I was only mentioning that part of it to say that we were supplying a deficiency. Somebody got it and lost it.

But whether it is technically a part of the record, as we know it is not in an ordinary case at law where it has to be brought in by a Bill of Exceptions,—it seems to me that if it is a part of the record the order such as we are moving for does no harm, and if it is not—

The Court: What is the relevancy of it?

1807 Mr. Peter: There are a great many things in that record about the Terre Haute Railroad. I won't try to suggest them all.

The Court: I probably have the full history of the Terre Haute Railroad in this record so far. I don't know what more you can do to it. If you want to restore the record that is lost, all right, but so far as making that a part of

this record, just putting in a whole volume of testimony—

Mr. Peter: No.

The Court: —that objection will be sustained.

Mr. Peter: I don't expect to introduce it here as an exhibit or anything of that sort, just an order to make it a part of the record in this case.

Mr. Burgess: That is the same thing.

The Court: That is the same thing, isn't it? How could it be a part of the record unless it is in here as an exhibit or something like that?

Mr. Peter: When I say a part of the record in this case, I mean that it should be considered—

The Court: Regarding the order restoring the record in the Clerk's office, you may have that. You may have the liberty to do that and you can do that. I am not
1808 going to encumber this record with volumes of testimony taken before Judge Wilkerson. I can't see any point to that.

Mr. Alsop: May I say one word on that?

The Court: Yes, sir.

Mr. Alsop: I was simply going to say that the gentlemen here who are objecting to the introduction of this evidence were all at that hearing and participated in it. If we look at it from the point of view of admissibility I don't think they have any standing to object here. In addition to that, it does disclose in a very concise way the relation of the Terre Haute to the Milwaukee. It is not a great deal. That is all it is. One volume of about 100 pages.

Mr. Whiflock: If the Court please, the trustees join in that objection, in the objection to the admission of that record into this record.

The Court: The objection is sustained.

Mr. Alsop: May we have an exception?

The Court: Yes.

Mr. Peter: Your Honor, may we have the same permission, to file in the Clerk's office, the transcript of
1809 testimony at the hearing on August 26, 1935, at which time the trustees were asking among other things for the directions of the Court with respect to the Terre Haute lease?

The Court: Very well.

Mr. Burgess: I don't understand what that motion is. If it is a motion to make things part of this record—

The Court: All he wants is permission to file them over in the Clerk's office. I don't see any objection to that.

Mr. Burgess: I have no objection to that.

Mr. Peter: Your Honor, in view of the ruling that was made on the motion I desire to ask this witness a question or two in addition.

The Court: Very well.

Mr. Peter: Q. In the year prior to the leasing of the Terre Haute Road, can you say how much or what percentage of coal the Milwaukee purchased from mines on other lines than the Terre Haute in Illinois and Indiana?

Mr. Moses: At what time?

A. Well, substantially 70 per cent.

1810 Mr. Peter: Q. Can you state—

Mr. Moses: What was the answer?

The Court: Substantially 70 per cent. That testimony has gone in here before. You can put it in again if you want.

Mr. Peter: Q. Can you state what railroads were serving the coal mines from which the Milwaukee purchased that 70 per cent?

A. Well, there was the C. & E. I., the Pennsylvania, the Illinois Central and the Terre Haute.

Q. Can you state for the year prior to the leasing of the Terre Haute how much the Milwaukee paid out to those foreign roads in freight charges for coal?

A. It was approximately $2,900,000.

Mr. Peter: That is all.

The Court: Have you finished, Mr. Peter? Is that all the questions you want to ask him?

Mr. Peter: That is all.

1811 *Cross-Examination by Mr. Oliver.*

Q. Mr. Severs, what part of the information shown on Exhibits 16 to 22 has already been introduced as a part of the record before the Commission? How much of it, what part of it?

A. The year 1936.

Q. 1936?

A. That is right.

Q. The information respecting the year 1937 and the year 1938 and 1939 is supplemental information?

A. That is so.

Q. The Commission had before it, however, the estimated earnings, or estimated net income for the year 1936 at the time of the hearing?

A. Yes, sir.

Q. Was the information shown on your Exhibit No. 23 likewise before the Commission?

A. The years 1924 and 1925 and I am not sure about 1926 were available to the Interstate Commerce Commission.

Q. Yes, sir.

A. The years 1926, 1927, 1928 and 1929 were not before the Commission to my knowledge. 1933 and 1812 1934 were filed in the August, 1935, hearing. The 1935 was never filed with the Commission, and, of course, as stated, the 1936 was, but the 1937 has not been.

Q. When you say that the information for the years 1924, 1925 and perhaps 1926 was available to the Commission, what do you mean?

A. Well, I mean that the Commission examined the record which we kept for those years along with their general investigation and commented on it in their report.

Q. When you say report, you mean the report of the Interstate Commerce Commission that was the result of this investigation of the St. Paul made in 1928, do you?

A. That is right.

Q. And referred to in what volume of the I. C. C. reports, do you recall?

A. Really, I couldn't answer that.

Mr. Moses: 131 I. C. C.

Mr. Oliver: Q. For the purpose of identification, I will ask you if the report to which you have referred is to 1813 be found in I. C. C. volume 131, beginning at page 615?

Mr. Moses: At 653.

A. That is correct.

Mr. Oliver: And the specific comments of the Commission dealing with the Terre Haute situation are to be found beginning with page 653 of that report?

A. In so far as the Terre Haute?

Q. Yes.

A. Not in so far as the Terre Haute is concerned.

Q. Yes, sir. Mr. Peter mentioned or referred several times to the transcript of the records of the Terre Haute.

Mr. Moses: We can't hear Mr. Oliver back here.

The Court: Mr. Moses says he can't hear you.

Mr. Oliver: Q. Mr. Peter referred to the transcript of the records of the Terre Haute. Is it not true that all of these purported earnings of the Terre Haute are estimates?

A. Yes. They are estimates.

Q. Now, referring to Exhibit 23, against, I notice that you do not include the results for the years 1921, 1922 and 1923. Were the earnings which you allocated to the Terre Haute on your estimated basis as favorable for those years as for the subsequent years?

A. Well, frankly I don't remember. I have the record here if you will permit me to get the record.

Q. Yes. That is perfectly all right.

A. For the year 1922 there was a deficit of net income after interest deductions of $173,000. In 1923 there was net income after interest deductions of $906,903. I have the first half, if you would like it, of 1921, or the last half, rather, of 1921.

Q. Yes. Please.

A. There was income of $332,743 after interest deductions.

Q. That covers then the entire period subsequent to the effective date of the lease agreement?

A. Well, 1931 and 1932 are not here. 1930 is not here. That is, 1930, 1931 and 1932.

Q. Did you explain why those years were not included?

A. I cannot explain that for the reason that the exhibit was prepared from information that was furnished on request for those specific years.

1815 Q. In your Exhibit 23 I notice that you have made your tabulation based entirely upon allowing the Terre Haute the full commercial tariff rates. Have you made similar tabulations on the cost of service basis for the same years?

A. Only for the years 1936 and 1937.

Q. Yes. That is contained in your other exhibits?

A. That is right.

Q. In all these exhibits you have credited the Terre Haute with commercial rates and divisions on company coal on the assumption that the line is operated as a separate railroad, have you not, Mr. Severs?

A. Well, the revenues assigned to the Terre Haute for the hauling of company coal, that is on the basis of division of rates that would obtain if it were operated as a separate property.

Q. In estimating the expenses of the Terre Haute in these same exhibits, have you figured them on the basis of

separate, independent operation with a separate traffic department and other overhead expenses?

1816 A. No, sir. The expenses are not developed on the basis of the Terre Haute being operated as a separately operated property.

Q. Even though your revenues were computed on that basis, of divisions for company coal?

A. For the most part, yes, sir.

Q. If the Terre Haute were operated as an independent railroad, are there certain additional expenses which it would incur in the Chicago district, and what is the nature of such expenses?

A. If the Terre Haute were operated as an independent property there are additional expenses which it would incur in the Chicago switching district over those that have been assigned to it on the basis that we have,—of the expenses in these exhibits. In other words, the line haul traffic delivered to connections, it would have to absorb the intermediate switching charge.

Q. On the basis of the 1937 traffic as shown in your exhibits, if the Terre Haute had been operated independently, what additional charges would it have incurred for this intermediate switching?

A. Approximately $500,000.

1817 Q. A year?

A. Yes, sir, for the year. You said 1937.

Q. That is correct, yes, sir.

A. Yes.

Q. What in your opinion, Mr. Severs, would be the general effect on the traffic of the Terre Haute if it were operated entirely independent of the Milwaukee Railroad?

Mr. Peter: I object to that on the ground that this witness is not qualified to answer any such question as that and on the further ground that it is utterly immaterial to any issue now before the Court.

Mr. Oliver: May I call your attention, first, to the fact that the revenues have been assigned to this carrier on the theory—

The Court: I thought that testimony was given by some other witness. I thought Mr. Scandrett testified to that.

Mr. Oliver: He testified generally, but I intend to develop it in some detail, following up Mr. Scandrett's testimony if I may.

The Court: I understand this man is a figure man, an

accountant, over there at the railroad. He is not an
1818 operator like Mr. Scandrett. I don't know whether he is qualified to answer a question like that.

Mr. Oliver: I should think he would be particularly well qualified inasmuch as comptroller he handles the accounting, knows the past history of this particular railroad when it was operated independently and for that reason we think he should be permitted to answer.

The Court: I don't think he is competent to answer a question like that. The objection is sustained. That same question was put to Mr. Scandrett when he was on the stand and I think he was qualified to answer it and I think he did answer it very intelligently.

Mr. Oliver: I will abandon that question.

Q. What particular types of traffic would in your opinion be lost to the Terre Haute if it were operated independently and the Milwaukee ceased to obtain its coal supply from mines on that line?

Mr. Peter: Same objection.

The Court: Same ruling.

Mr. Oliver: I think I would like to point out, if
1819 your Honor please, that this witness is and has been for some time occupying a much broader position than that of accountant. He is at the present time the assistant to the trustees, having, as I understand it, various other functions and duties other than those of an accountant.

The Court: Didn't Mr. Scandrett give testimony along this very line and answer questions just like this?

Mr. Oliver: He did, but very generally.

The Court: Then what is the use of duplicating it?

Mr. Oliver: Except I want to go into a little greater detail, if your Honor please.

The Court: I will still sustain the objection.

Mr. Oliver: Very well, sir.

Q. What were the proportions of the Terre Haute revenue for the various types of traffic on the Terre Haute in the year 1936?

A. Well, coal was 68 per cent of all traffic, 40 per cent of which was the Milwaukee Company coal. The balance of 32 per cent was miscellaneous traffic.

Q. When you are giving those percentages you are computing them on the basis of revenue per cent?

1820 A. That is right. On an analysis of the revenue traffic.

Q. Yes.

A. Basing it on dollars of revenue.
Q. You have used 1936 for the purpose—
A. Of this illustration.
Q. —of this illustration?
A. Because we made an analysis for that year.
Q. Yes, sir. Would you say that 1936 is somewhat typical of the other years?
A. I think it is relatively typical year.
Q. For the purpose of—
A. Of determining sources of traffic, yes.
Q. Yes. What about the relative amounts of originating traffic as compared with traffic received from connections?
A. Well, traffic originated on the Terre Haute is about 67 per cent of all traffic and traffic received from connections about 33 per cent, using this same year 1936.
Q. Yes. Do you happen to have with you, Mr. Severs, any information which will enable us to break down those percentages as between coal traffic and general traffic?
1821 You said traffic received from connections was about 33 per cent.
A. Yes, sir. You mean the type of traffic?
Q. Yes, as between—
A. Of that 33 per cent?
Q. Yes, sir. Perhaps I may help you.
A. I can say this, that of $5,000,000 of coal traffic handled by the Terre Haute out of a grand total of all revenue of $7,389,000 in this year, 32 per cent of the $7,389,000 or $233,000, $892,000 of that was coal and the balance is miscellaneous traffic.
Q. Can you convert that into percentages so that the record will disclose something which compares with the aggregate percentage?
A. Well, about 40 per cent of the traffic received from connections is coal.
Q. Has the development of commercial coal shipments from the Terre Haute Lines been materially expanded since the Milwaukee leased the Terre Haute?
A. Yes; I think it has.
Q. When you mentioned a few moments ago that 33 per cent of traffic over the Terre Haute was received
1822 from connections and 67 per cent originated traffic, did you mean or did the 33 per cent include traffic received from the Milwaukee?
A. No. No, I had in mind foreign connections.

Q. Yes.

A. Other than the Milwaukee.

Q. Well, then, a part of your 67 per cent shown as traffic originating on the Terre Haute was probably traffic received from the Milwaukee; was it not?

A. Not originated on. The 67 per cent is traffic originating on the Terre Haute.

Q. Then you say that the remaining traffic of 33 per cent was received from connections?

A. That is right.

Q. So that the 33 per cent presumably includes traffic coming from the Milwaukee as well as foreign connections?

A. That is right.

Q. Does the purchase by the Milwaukee of company coal enable the coal operators located upon the Terre Haute to compete in the sale of commercial coal and thus build up the commercial coal traffic?

A. I think that is very true.

1823 Q. The Milwaukee has also opened up gateways for the movement of traffic to and from eastern destinations through its influence and solicitation, has it not?

A. Yes, sir.

Q. Which has operated towards increasing the revenues which you have assigned toward the Terre Haute in your previous studies?

A. Yes, sir.

Q. Have you made any study, Mr. Severs, of the character of traffic handled by the Terre Haute when it was operated independently; that is, prior to the time it was leased on July 1, 1921, by the Milwaukee?

A. I have made a study of the four and a half years prior to the leasing of the Terre Haute.

Q. What proportion of its traffic during that time was bituminous coal?

A. Approximately 85 per cent of the total traffic was bituminous coal.

Mr. Moses: How much?

Mr. Oliver: 85.

A. 85 per cent as compared with 68 per cent
1824 during the year 1936. The balance of the traffic being products of agriculture, stone from the Bedford quarries and miscellaneous traffic.

Q. What proportion of its traffic originated on its own

line during this same period? That is, when it operated independently?

A. About 95 per cent, leaving about 5 per cent received from connections, as compared with 33 per cent at the present time.

1825 Q. That is in comparison to 33 per cent which it now receives from connections as a result of its affiliation with the Milwaukee.

A. That is right.

Q. Mr. Severs, have you prepared a statement showing income account of the Terre Haute for the eight years preceding its lease by the Milwaukee Railroads?

A. I have prepared from the annual reports of the Terre Haute made to the Interstate Commerce Commission such a statement.

Q. What were the average annual earnings of the Terre Haute available for interest during this period?

Mr. Peter: I object, if the Court please. I think it is irrelevant to any issue here presented.

Mr. Oliver: I think it is certainly relevant.

Mr. Peter: The question is not whether the Terre Haute earned money as an independent line before the lease. The primary question is whether the lease is valuable to the Milwaukee. What would happen to the Terre Haute in the future if the lease were rejected or what happened before the lease is irrelevant.

The Court: What is the question?

Mr. Oliver: The question is, what did this line earn as an independent railroad before it was taken into the Milwaukee system.

1826 Mr. Peter: Before 1921.

The Court: Before 1921. How is that material here?

Mr. Oliver: It is material for showing the value of the Terre Haute. The point that these gentlemen are making is that the Terre Haute is a prosperous line. We say its prosperity is attributable in great part to its relationship to the Milwaukee system and because the Milwaukee brought it into its family. The Milwaukee itself is contributing a great part of these revenues.

The Court: You still want to keep it in your family, don't you?

Mr. Oliver: Well, we are sustaining the report of the committee.

The Court: I understand. The Commission's report, rather.

Mr. Oliver: Yes. We want to show and we think we are entitled to show that this road if operated independently, and, that is one measure of testing the value of the road, it is a recognized measure of testing the value of the road,—is to establish and determine what the road would do if it were operating as an independent line.

Mr. Clay: Your Honor, if I may say a word, the
1827 question is the value of these Terre Haute securities, as we see it, and we want to get in this oral evidence to show the securities, the income bonds, before the Milwaukee took it over, they did not pay the interest on the income bonds; that for several years there was no interest paid; that in several years they paid interest when they did not earn it, and that the highest interest ever paid on the Terre Haute income bonds was two and one-half per cent. They are now claiming five.

Mr. Peter: In the first place, the showing is too remote in point of time. The conditions over twenty years ago and up to 1925 or thirty years ago, being the whole period about which the witness was asked, is too remote in point of time to be of probative effect under present conditions. In the second place, the question is not what the Terre Haute can do independently; the issue is the value of the Milwaukee. Where those elements of value come from I say is immaterial. They cannot exist without the railroad. It is the same reasoning as if a man had an automobile without a tire and the other man has four tires but no automobile. The tires may not be worth much, but they are worth something when you put them on the automobile.

Mr. Sykes: The question should be and is cer-
1828 tainly part of the evidence to show whether or not the lease has been made.

The Court: In 1921. This railroad was reorganized in the proceedings in 1928.

Mr. Clay: The whole value of the reorganization was this lease, in 1928.

The Court: What have they done about it in the last twelve years, then? The objection is sustained.

Mr. Oliver: I should like to make an offer of proof, what I expect to prove.

Q. Have you prepared an exhibit reflecting the results

of operation of this Terre Haute as an independent road for the eight year period which you have indicated?

A. I have. The information was developed from reports made by the Terre Haute to the Interstate Commerce Commission for each of these years. We have copies of them.

Mr. Oliver: I offer as Exhibit 26 a statement showing the revenues, expenses and net income of the Chicago, Terre Haute and Southeastern Railway Company for the eight year period, that is, for the period 1914 to June 30, 1921, up to the time it was acquired by the Milwaukee.

Mr. Peter: Object for the reasons previously stated.

The Court: The offer is made and the objection
1829 is sustained.

Mr. Oliver: Q. Are those figures which were reported to the Interstate Commerce Commission by the Terre Haute?

A. They are, sir.

Q. They are a summary of the earnings as reported to the Interstate Commerce Commission in accordance with the requirements of the Interstate Commerce Act?

A. Yes, sir.

Mr. Moses: It may be—now, I did not offer the exhibit, but we would like the benefit of the exception to the ruling as if we had offered it.

The Court: That is true.

Mr. Sykes: On behalf of the United States Trust Company, trustee under the general mortgage—

The Court: You make the same objection.

Mr. Sykes: This is admissible to show whether the lease was improvident when it was made.

The Court: Back in 1921.

Mr. Sykes: That is part of the inquiry that is conducted, whether or not it is a lease that should be carried on now. We will have to determine whether the lease assuming a $21,000,000 obligation was or was not an improvident contract when made, as the Interstate Commerce Commission found.

1830 The Court: What does the record show the Milwaukee made out of this lease in the last eight or ten years? What net profit has it made out of it from 1924 up to date?

Mr. Sykes: That is not the question.

The Court: The question is in this exhibit. Don't they

show the net profit each year? You want me to go back to 1921 to find out about this?

Mr. Sykes: To find out whether the lease was improvident, and the Interstate Commerce Commission referred to this report in the proceeding.

The Court: Exactly. Maybe that is the reason that they are averse to this lease; they do not think it should have been adopted originally. You go back to the Interstate Commerce Commission and make your showing there, if there is any wrongdoing, and let the Commission make a finding about it. You are not going to thrash this out in this court.

Mr. Sykes: We have no jurisdiction.

The Court: Then I have no jurisdiction. Let us get to something else.

Mr. Oliver: May I make one further statement in connection with my offer. I think I failed to make plain to your Honor that the purpose of this offer is to ascertain what proportion on this estimated basis right-
1831 fully belong to the Terre Haute. Beginning in 1921 the operation was a joint enterprise between the Milwaukee, partnership enterprise. A part of those earnings were contributed by the Milwaukee.

The Court: You are trying to show that the Milwaukee did not charge enough expenses against them.

Mr. Oliver: No.

The Court: What else are you trying to do? You are trying to increase the expenses of the Terre Haute.

Mr. Oliver: That is one thing.

The Court: By showing the books do not reflect all the legitimate charges against the Terre Haute.

Mr. Oliver: The important thing I am attempting to show is that a great proportion of this traffic upon which these earnings are attributed are due to the fusion with the Milwaukee.

The Court: I don't think anybody disputes that. It has been testified to by three or four witnesses and nobody has entered any objection to it.

Mr. Oliver: Yes, but I am attempting to show by the testimony of records of earnings prior to 1921, to indicate by that what proportion of the earnings were rightfully attributable to the Terre Haute.

The Court: So far as 1921 is concerned, please
1832 understand that the objection to the testimony has been sustained, so let us go on to something reasonably up to date.

Mr. Sykes: There is this to be considered—

The Court. Listen. The objection has been sustained. Put another question.

Mr. Oliver: May I complete my offer of proof? I expect to prove that the average earnings of the Terre Haute—

The Court: Just a moment, my friend. If you are not satisfied with that ruling, you have recourse some other place. Don't stand there discussing with your associates.

Mr. Sykes: Your Honor, I don't like that remark.

The Court: Where is the Marshal? Go ahead and make your offer.

Mr. Oliver: Yes, sir. I expect to prove that the annual earnings of the Terre Haute available for bond interest during the period prior to its acquisition by the Milwaukee were $544,730, in comparison with the present rental paid by the Milwaukee of $1,034,684. That percentage, the percentage of the actual earnings when it operated independently, was 52.65 of the present rental paid, and I would further expect to prove, if permitted by your Honor, that
1833 during this eight year period when the road was operated independently, that the business conditions were generally better than during the period as a whole, particularly during the period immediately prior to the time of this proceeding.

The Court: Three or four years of that period had to do with the World War, didn't it?

Mr. Oliver: Yes, sir, but this offer includes, sir, a period prior to the World War.

The Court: I understand.

Mr. Oliver: Now, I would expect to prove further, if permitted by your Honor, that the average annual earnings during this eight year period is much less than the amount which would have been received by the bondholders during the nine year period in the testimony under the Commission's plan, which would be, according to the brief submitted by the Terre Haute interests, $774,475 annually.

I think that completes my examination of this witness. Just one other question.

Q. Mr. Severs, you were questioned about where the Milwaukee received its coal traffic, what different roads it received its coal traffic from prior to its acquisition of the Terre Haute. I believe you stated it received the

preponderance of its traffic from the C. & E. I., the
1834 Pennsylvania and the Terre Haute. Is that correct, sir?

A. That is right.

Q. Have you made any analysis—I mean company coal—have you made any analysis, Mr. Severs, to ascertain what the effect has been upon the commercial coal traffic interchanged between the C. & E. I. and the Pennsylvania since the acquisition by the Milwaukee of the Terre Haute and the purchase of company fuel from Terre Haute mines?

A. Well, I have looked into prior periods beginning or going back as far as 1911 and going up to as far as 1919. Insofar as the C. & E. I. and the Pennsylvania are concerned, the coal traffic that originated on those lines—

The Court: Will you read the question.

(Question read.)

The Court: You are going back to 1911?

Mr. Oliver: No, sir, I am talking about the present time.

The Court: He is going back to 1911. Let us confine it to the period from the date of this lease up to date.

Mr. Oliver: May I explain, sir, that this is a different
1835 question from the one you excluded. You cannot get the whole picture, it seems to me, of the effect of this lease without taking into consideration other things which have a bearing on the net operating results of the Milwaukee. We have testimony in the record, if you recall, to the effect that the purchase of company coal from a coal operator enabled that operator to compete and to, perhaps, even survive during competition with other coal operators in the sale of commercial coal and thus furnishing to the railroad commercial coal traffic.

Now, I would hope to have this witness say that immediately upon cessation of purchases of company coal from mines located upon the C. & E. I. and immediately upon the cessation of purchases of company coal from mines located upon the Pennsylvania, that the coal operators upon that road discontinued in great part the sending of their commercial coal over the Milwaukee, and thus the Milwaukee lost large sums of revenue which are not, of course, disclosed in this revenue statement here, although it gained additional revenue from the Terre Haute mines. You have got to have the whole picture, it seems to me, if you are going to consider this question adequately.

The Court: You are still trying to prove that this was

an unprofitable transaction so far as the Milwaukee
1836 Railroad was concerned.

Mr. Oliver: That is right, yes, sir.

Mr. Clay: I think the final net effect is disclosed by the figures in the record. This is an attempt to go back of the figures and show some of the elements that produced the final results.

Mr. Oliver: I think counsel does not mean what he says about that. The figures disclose the movement of coal now from the commercial mines. The figures in the record do not disclose what shift has been made in the traffic because of the acquisition of the Terre Haute, and you cannot get it unless you take the whole record.

The Court: Have you any evidence to show what the shift has been?

Mr. Oliver: I propose to show by this witness what the shift has been.

The Court: He may answer that question.

Mr. Oliver: Q. What shifts have there been, Mr. Severs?

A. Subsequent to the time we leased the property?

Mr. Oliver: Yes. I think it is tremendously important, your Honor.

A. Coal traffic originating on the C. & E. I. and Pennsylvania in the prior period destined into the Mil-
1837 waukee territory, the territory of the Milwaukee, were about 15 per cent of all traffic, that is, of coal traffic originating in the Illinois-Indiana fields in the prior period. It is about 9.8 per cent at the present time.

Q. The decrease has been about 40 per cent for the commercial coal traffic.

The Court: Did you say 40 per cent?

Mr. Oliver: I am asking, it is about 40 per cent reduction in the commercial coal traffic from the C. & E. I. and the mines on the Pennsylvania?

A. No, there is about an 18 per cent decrease.

Q. I mean 15 per cent as compared to 9 per cent.

Mr. Clay: We can all work that out.

The Court: Sustained.

Mr. Oliver: Q. In your opinion is that attributable to the fact that the company ceased purchasing its commercial coal from mines located on the Pennsylvania and mines located on the C. & E. I. and made purchased from the Terre Haute mines?

Mr. Clay: I object. The witness is not qualified to answer, and it is immaterial and speculative.

The Court: You have the entire facts in there. They stopped buying coal from lines located on these other railroads.

1838 Mr. Oliver: I am not pressing it.

The Court: The decrease in freight revenue, I suppose, is the result of that.

Mr. Oliver: I am not pressing the question.

Q. Have you any data or have you made any calculation, Mr. Severs, which would indicate the effect upon the revenues as a result of this changed policy?

A. No, sir, I have not.

Q. Has there been any increase in the amount of the securities issued and outstanding of the Terre Haute before and subsequent to the time of the lease?

A. There has been an increase in the securities outstanding subsequent to the lease.

Q. How much? How many additional securities were issued?

A. That is kind of a hard one to remember, but it is something in excess of $3,000,000.

Q. Issued in great part, were they not, to pay off an operating deficit which had been incurred prior to the lease?

A. I don't think that is a fact.

Q. To pay off the indebtedness and interest.

A. The securities were issued for the most part to reimburse the Milwaukee road for improvements that had been made on the Terre Haute lines.

1839 Q. Were they in part issued to pay for accumulated interest on the old bonds which had been unpaid?

A. I think not.

The Court: Q. Why did you say they were issued?

A. For the most part to reimburse the Milwaukee road for improvements and betterments made on the Terre Haute lines.

Q. That was a legitimate purpose, wasn't it?

A. Yes.

Mr. Alsop: The securities were not issued to pay back interest on the other indebtedness, were they?

A. I cannot answer that question.

The Court: Let me ask you this: Doesn't the Interstate Commerce Commission have anything to do about the issuance of railroad bonds?

A. Yes, your Honor, they do.

Q. Must not an order have been issued?

A. Correct.

Q. Then it was approved by the Commerce Commission.

Mr. Oliver: I assume they were. Then the Commission has fixed the terms of the lease.

The Court: I do not get what you are driving at. You are trying to have the witness say these bonds were issued to pay some sort of illegal debt. Now, it appears from his mouth they were issued to pay a legitimate debt.

1840 I do not get the attitude you display toward this situation at all.

Mr. Oliver: I am sorry. Apparently I was misinformed.

The Court: I understand these bonds were issued by the Interstate Commerce Commission, apparently, for legitimate purposes. Why go back and blacken the reputation of a lot of railroad people around this part of the country. I do not like that attitude at all. I tell you so very frankly.

Mr. Oliver: I did not intend to do that.

The Court: You read the question you put to this witness.

Mr. Oliver: May I ask one other question?

The Court: Yes, sir.

Mr. Oliver: Q. Mr. Severs, in your Exhibit No. 23 you have shown the tons of company coal handled during each of the years as indicated on that Exhibit.

A. That is right.

Q. Do you have available commercial coal tonnage for the corresponding period?

A. Yes, I have.

Q. Do you mind giving those for the record, please. 1924 is the first year shown on the exhibit.

Q. Yes, 1924, tons of commercial coal 3,220,960;

1841 1925, 3,251,045; 1926, 3,104,036; 1927, 2,260,810; 1928, 2,256,361; 1929, 2,392,863; 1933, 1,979,071; 1934, 2,011,271; 1936, 1,942,135; 1937, 2,012,551.

Q. Did you give 1937?

A. 1937 is 2,012,551.

Mr. Oliver: If your Honor please, these figures contrasted with the figures shown opposite the—

The Court: Just a minute. Somebody missed back there.

Mr. Moses: I think he skipped the 1936, and read 1936 and 1937 or 1935.

The Witness: 1935 is not on that.
The Court: Have you got them now?
Mr. Moses: May he say what it was in 1935?
The Witness: 1935, 1,879,835.
Mr. Moses: 1936 was how much?
The Witness: 1,942,135.
Mr. Moses: That is what he read as 1935.
The Court: What do you say those figures are?
Mr. Oliver: I am a little confused about this.
Q. Will you please read the figures for 1935, 1936 and 1937.
A. I might have misquoted them.
The Court: All right. He has read 1935 now.
A. 1,879,835. That is 1935. 1936, 1,942,135; 1937, 1842 2,012,551.
Mr. Oliver: That is right.
The Court: What were you going to say those figures are?
Mr. Oliver: I was going to point out that those figures are to be compared with figures shown on Exhibit opposite Milwaukee coal handled, so that you would have the comparison between the commercial coal and the company coal from the Terre Haute mines handled during those particular years.
The Court: You are giving now in figures what you gave a while ago in percentage, isn't that what is going on here?
Mr. Oliver: Yes.
The Witness: Yes, this is tons of coal originating on the Terre Haute line.
The Court: He gave the percentage a while ago.
Mr. Oliver: For the whole period, yes. I think that is all, if the Court please.
Mr. Clay: I have a question just bearing on one point.
The Court: Yes. Go ahead.

1843 *Cross-Examination by Mr. Clay.*

Q. The Terre Haute after the execution of this lease did issue, did it not, Mr. Severs, an amount of first refunding bonds to the Milwaukee?
A. Shortly after that.
Q. Would it refresh your recollection if you would read from 181 ICC page 656, right there (indicating)?
A. I have read it.

Q. Now apparently under the terms of the Terre Haute lease the Milwaukee is obligated, isn't it, to pay certain obligations of the Terre Haute as they mature, and also to advance moneys for additions and betterments?

A. That is so.

Q. At the time these bonds were issued there were outstanding advances of the Milwaukee to the Terre Haute, were there not, in an amount roughly equal to the principal amount of the bonds?

A. Well, the advances—

Q. Let me withdraw the question. I will state it more simply. Weren't the bonds issued to the Milwaukee to refund the open account advances of the Milwaukee to the Terre Haute?

A. That is correct.

1844 Q. And weren't those advances both for additions and betterments and for the payment of obligations of the Terre Haute?

A. Obligations in the form of principal, but not interest.

Q. Principal but not interest.

A. That is right.

Q. There was no impropriety about the refunding in that way, was there?

A. No, sir.

Q. Nobody has ever suggested there was any?

A. No, sir.

Mr. Clay: That is all.

Cross-Examination by Mr. Wheelock.

Q. Mr. Severs, directing your attention to Exhibit 25 which purports to show expenses for the year 1939 of the Terre Haute paid by the Milwaukee, I will ask you if it is not true that the Milwaukee also pays property taxes on the Terre Haute property?

A. That is so.

Q. Annually.

A. That is so.

Q. That item is not included in the Exhibit 25.

A. It is not.

1845 Q. Will you tell the Court approximately in round figures how much the property taxes on the Terre Haute paid by the Milwaukee annually, run? I am not asking for exact figures, but just the approximate amounts.

A. I think the year 1939 would be the accruals here, approximately the payments.

Q. How much?

A. $141,000.

Q. Would that be typical of the years, about that figure?

A. Yes, I am inclined to think so, that is, the later years. Of course the earlier years are considerable in excess of that. There has been a reduction in ad valorum taxes in the State of Indiana due to the income tax.

Mr. Wheelock: That is all.

Mr. Peter: May I say a word for the sake of the record?

The Court: Yes.

Mr. Peter: I wish to make this statement: Where the taxes are shown in statements of expenses, under tax accruals, immediately under that to show a single figure at the bottom, rental for the year 1937 was $1,033,000. This was $1,022,000 and the other ten was what was on 1846 that statement, referred to as Corporate Expenses.

The Court: Do you want to ask some questions?

Cross-Examination by Mr. Moses.

Q. Mr. Severs, do you have shown here on this Exhibit 23 income figures for the years 1924 down, excluding three years, 1930 to 1932?

A. You will have to speak louder; I cannot hear you.

Q. You have shown on this statement, Exhibit 23, the income for various years beginning with 1924 and omitting three years, 1930 to 1933, inclusive, showing your estimated income of the Milwaukee from the Terre Haute lease, is that correct?

A. That is correct, on the basis of allowing to the Terre Haute tariff rates for the haul of company coal.

Q. Now, you are familiar with this report of the Interstate Commerce Commission to which Mr. Clay just called your attention where it shows that these three million odd dollars for additions and betterments advanced by the Milwaukee is spoken of. I call your attention to the second succeeding paragraph in which the Commission states: "Our accountants after a thorough examination of the whole situation testified that the total financial bur-
1847 den as of June 30, 1925 which had fallen upon the income of the St. Paul as a result of this lease was nearly eleven million dollars." In that period of three years from July 1, 1921, or four years, from July 1, 1921

to June 30, 1925. How do you reconcile that with your estimate here that the Milwaukee made one million four out of the Terre Haute in 1924 and two million three in 1925, and small amount you gave us, I think, for the earlier years, and only one deficit?

A. Well, I think that the summarization of the income as shown on this statement is unrelated to what the Commission had to say so far as financial burdens are concerned. They added up a lot of factors, including the purchase of the stock, what the Milwaukee paid for the stock and the material and certain other things that are in addition to what the income would show. Perhaps that showing is in that report there.

Q. They bought this stock at ten dollars a share and guaranteed the interest and principal of these bonds which were held at that time by the banks who had written them off as total loss, isn't that correct?

Mr. Swain: I object to that as having nothing to do with this particular issue.

Mr. Peter: I object to that on the ground that that 1848 report speaks for itself, and in the first place, he is asking how he reconciles his statement. He has explained how the statements were made. The matter is purely argumentative, and whether this witness does not agree with the Commission is immaterial.

The Court: Objection sustained.

Mr. Moses: Q. Mr. Severs, did you prepare Exhibit 181 which was introduced before the Interstate Commerce Commission entitled "An allocation made by the debtor of the actual system earnings for the year 1936, mortgage districts"?

A. No, I did not prepare that.

The Court: That is the answer; you did not prepare it.

Mr. Moses: Q. Are you familiar with it?

A. I have seen it.

Q. Yes. Have you any reason to doubt its having been prepared as accurately as the accountants of the company could do?

A. I have no doubt but that it is reasonably accurate.

Q. Yes.

The Court: Accountants of what company?

Mr. Moses: Of the Trustees, the Chicago, Milwaukee, St. Paul and Pacific. Prepared in their office, was it 1849 not?

A. I think that that was prepared probably in Mr. Walker's office.

Q. Mr. Walker's office? You don't know?

A. I know he introduced it before the Commission.

The Court: Who is Mr. Walker?

Mr. Moses: Mr. Walker is Chairman of the committee representing the Institutional Investors.

Q. I call your attention, Mr. Severs, to an item on this Exhibit 181 before the Interstate Commerce Commission where the earnings of the various divisions of the system have been segregated. I call your attention to the item under the column indicating Terre Haute earnings, income available for fixed charges $781,120, and ask you if that does not represent the net earnings of the Terre Haute for that year, excluding freight on Milwaukee's coal transported over the Terre Haute?

A. That is right. You will find this figure on my exhibit, that 875.

Q. I am talking about this.

A. That is right.

Q. If the Milwaukee coal had not been transported over the Terre Haute and the Terre Haute had not been credited as it has been on your exhibit, in one instance at the 1850 tariff rate and in the other instance on cost of transportation, the Terre Haute would have earned only $781,000 odd to pay $1,099,000 odd in bond interest, is that so?

A. Your question is on the assumption that no credit had been given to the Terre Haute for the haul of the Milwaukee coal, either at tariff rates or on the cost of service rates?

Q. In other words, if that coal had not been shipped over the road and the earnings of the Terre Haute had been from its other business and it had not had any Milwaukee's locomotive coal, it would have earned only $781,000 to pay over a million dollars interest.

A. I do not agree with that, for the reason that in arriving at that figure, as I understand the Exhibit, there has not been taken out of the operating expenses the cost of transporting company coal which is in that maintenance, and your transportation, and your maintenance of equipment account.

Q. Well then, how much would the Terre Haute have earned, according to your interpretation of this, if it had not hauled any Milwaukee coal and were not credited with any freight on Milwaukee coal?

A. That is on my exhibit.

1851 A. One of those you put in?

A. Yes, $875,327 after interest.

Mr. Peter: You say "after interest." You mean after rent.

Mr. Moses: Q. In other words, then, Mr. Severs, if I understand your answer correctly, your statements, Exhibit 17, for the year 1936, on cost of service basis, showing $875,000.

A. The same is shown on the exhibit you have in your hand. There is the figure that matches mine, and there is your deduction.

Q. So that on a practical cost of services basis, including this hauling of Milwaukee coal and charging the cost of operation, the Terre Haute would have earned, $875,000 over bond interest, is that correct?

A. Over rent, yes, sir.

Q. Over rent?

A. Yes, sir.

Q. Well, the rent is bond interest plus this eleven thousand dollars.

A. Yes, sir.

Q. And this nineteen sixty-six is the amount that it would have earned if it had just been credited with

1852 the full tariff rates without extra cost, and this nineteen sixty-six is on the same basis as that exhibit 23 that gives it for all the years from 1924 down.

A. That is correct.

Q. And these other exhibits 19 and 21, or rather 22 show the cost of service basis for these other?

A. For each of the years 1936 to 1939, inclusive.

Q. 1936 to 1939, inclusive. Your Exhibit 23, Mr. Severs, shows a number of tons of Milwaukee coal hauled from year to year over a period of fourteen years. Well, it begins in 1924 and ends in 1937. He has left out three years, why he has not explained, but it shows, and not uniformly, but a gradual diminishing quantity, does it not, starting with two million and a half in 1924, getting up to two million nine in 1926 and down to sixteen in 1934, then up again to two million in 1937, is that correct?

A. That is correct.

Q. Now, Mr. Severs, if the Milwaukee diminished the use of coal in its locomotives by reason of substitution of oil burners, that is oil-burning steam locomotives and Diesel locomotives, the volume of this coal traffic over the

Terre Haute will necessarily diminish, will it 1853 not?

A. That is true.

Q. And if that progress over a series of years, instead of having 40 Diesels and 78 oil burners, they have 400 Diesels and 150 oil burners, your coal traffic would go down a whole lot, wouldn't it?

Mr. Alsop: I am objecting to that question as the witness is not qualified to testify, and too speculative, your Honor.

The Court: I am going to sustain the objection on the theory that you can make that argument, Mr. Moses. You have the figures in there now.

Mr. Moses: All right. I think that is all, sir.

Mr. Hoffman: May I ask a question or so?

The Court: Can you finish before we recess?

Mr. Hoffman: I think I have only three or four questions.

The Court: All right.

Cross-Examination by Mr. Hoffman.

Q. Mr. Severs, I notice 1930, 1931 and 1932 were omitted. Why?

A. I have answered that question.

Q. I didn't hear you; I am sorry.

1854 A. I said this statement, all the information for all these statements was—

The Court: They asked him to omit those years.

The Witness: That is right. Why, I don't know.

Mr. Hoffman: Q. Have you any information as to what the results for those three years might show on a similar basis?

Mr. Peter: I ask leave to put in those three years as a supplemental exhibit.

The Court: Would that answer your inquiry?

Mr. Hoffman: May I ask one or two more questions?

The Court: He is going to prepare another exhibit and put them in. Go ahead.

Mr. Hoffman: Q. Do I correctly understand, five hundred thousand dollars switching charges per year are not included among the expenses?

A. You are incorrect in that assumption.

The Court: If it were operating as an independent rail-

road it would have to pay a half million dollars to absorb charges in this freight district.

Mr. Hoffman: That is what I understood.

The Court: That is the answer he made a while ago.

Mr. Hoffman: Q. Now, have you made any calculation, if operated as an independent railroad, and no Mil-
1855 waukee coal went over the Terre Haute, no coal being so acquired there, what those figures would show?

A. I made no such calculations.

Q. Have you any idea in a general way what the results might be?

A. I have none.

Q. You have not. You are not prepared to testify to that. These figures, however, would be substantially changed, would they not?

A. I don't think I can answer it.

Cross-Examination by Mr. Peter.

Q. Mr. Severs, do you know whether or not there was a strike in the Indiana-Illinois coal fields in the year 1922 among the coal miners?

The Court: What year?

Mr. Peter: 1922, the year of the deficit.

The Court: Q. Do you know or do you not know?

A. I don't know.

The Court: That is the answer.

Mr. Peter: Q. You said in answer to a question of Mr. Oliver that the figures of earnings were estimates. You mean that they were made in accordance with this formula known as Rules Governing the Prepa-
1856 ration of Separate Records to show results of operation, as Exhibit 140 in finance docket 10882 before the Interstate Commerce Commission.

A. The question, as I recollect it, that Mr. Oliver asked me, was with reference to Exhibit 23.

Q. That is right.

A. From 1924 to 1929 and 1933 and '34, and those are estimates.

Q. I did not so understand.

A. But beginning with July 1, 1935, we have kept a separate and distinct set of books governed by that formula, which is before the Interstate Commerce Commission.

Q. That is an answer.

A. And I might say that there are some estimates, always are when you operate, or determine revenues and expenses for a piece of line that is operated as a part of the system. There is necessarily some apportionments that have got to be made, that cannot be accurately ascertained.

Q. And they also show in these separate rules?

A. That is right.

Q. I want to ask you whether you wish to make a correction. As I heard you, you said to Mr. Oliver you had shown cost of service basis only for the year 1857 1936.

A. Before the Interstate Commerce Commission.

Mr. Hoffman: Oh. That is all.

Mr. Nicodemus: Mr. Peter, to show the commercial coal for these additional years, you are going to submit an exhibit, so you have it in the record?

Mr. Peter: If Mr. Severs has it I want him to put it on.

The Court: Are you all through with Mr. Severs? Recess to 2:00 o'clock.

Whereupon the further hearing of this cause was continued to 2:00 o'clock, P. M., September 6, 1940.

1858 In the Matter of
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Debtor.

September 6, 1940,
2:00 o'clock P. M.

Court convened pursuant to adjournment.

Present: Same parties as before.

Mr. Alsop: Your Honor, I am appearing here for the Terre Haute First Lien Bondholders' Committee, which includes people who hold the first and refunding 5's, due in 1960 of the Terre Haute, the Southern Indiana 4's, and the Bedford Belt 5's. The Southern Indianas are due in 1951, and the Bedford Belt, which has only $250,000 outstanding in the hands of the public, is past due, having been due on July 1, 1938.

I had thought it would be proper for me to prove the formation of the Committee and the number of bonds it holds, but for the purpose of saving time and the record if it is agreeable to the Court and the other gentlemen present I think I can shorten the thing very much by making a short statement as to who the Committee is and what bonds it represents.

1859 The Court: Is there any objection?

(No response.)

Mr. Alsop: The Committee was formed on the 17th of May, 1940. It is composed of Mr. Charles B. Roberts, who is assistant vice-president of the Pennsylvania Company for Insurance on Lives and Granting of Annuities. Mr. Roberts' company owns a hundred thousand of the first and refundings outright, and holds about two hundred thousand more for various trust accounts in which it is trustee.

Another member of the Committee is Mr. John E. Blunt of this city, formerly vice-president of the Continental-Illinois National Bank and Trust Company, who is either here now or will be here in a few minutes, and he is on the Committee because he is acting as agent for a man who owns $47,000 of the bonds of the first and refunding 5's.

Another member of the Committee is Mr. Roger Williams, a partner of Estabrook & Company. Mr. Williams is trustee of a fund for the International Committee of the Y. M. C. A., and in that capacity he holds $50,000 of the first and refunding 5's, and he has also customers who hold some of the securities. Mr. Williams is also vice-president of the Finance Committee of Cornell University

1860 which holds a hundred thousand of the first and refunding 5's.

The fourth member of the Committee is Mr. Lemuel H. McHenry of Kentucky, who personally holds $15,000 of bonds.

Pursuant to this meeting on May 17, 1940, when the Committee was organized, it sent out two letters to all the bondholders so far as their names and addresses were ascertained from the records of the various trustees and from the records in this Court.

The Committee has received powers of attorney pursuant to those letters authorizing the Committee to enforce the rights of the bonds and forbidding the Committee to consent to any changes such as those suggested by the Interstate Commerce Commission's plan.

The total of the bonds represented by the Committee under these powers of attorney to date is $2,539,000, and I may say that these authorizations continue to come in, some every day.

In addition to this sum we have had a letter from Cornell University authorizing the Committee to represent it. It is an informal authorization to the extent that the power of attorney has not been exercised by Cornell
1861 yet, owing to the fact its appropriate officers are away.

I have a copy of the letter if the Court would like to have it on file.

I think that really covers the facts that I want to prove.

Mr. Smith: Mr. Alsop, will you state, please, whether your Committee is proceeding under paragraph E of Section 77 or is proceeding pursuant to the terms of the Securities & Exchange Act?

Mr. Alsop: The Committee is acting under certain regulations of the Securities & Exchange Commission Act. We took it up first with the Interstate Commerce Commission, whether this Committee should qualify under Section 77-B of the Railroad Reorganization Act, and we obtained a ruling from the Finance Bureau that this Committee did not have to qualify under Section 77 for the reason it was representing and was going to solicit the representation of securities of a railroad which is not in reorganization under Section 77, and which is not in receivership in any state or Federal Court, that is the Terre Haute Railroad.

We then took the question up with the Securities & Exchange Commission on the question of whether or not we should go through a regular registration proceeding
1862 and the Securities & Exchange Commission ruled that if we did not ask for deposits of these bonds but were willing to act under a power of attorney it was not necessary for us to go through regular registration proceedings, and if we would file with the Commission before publication any letters or information which we sent out to bondholders, that would be sufficient. We followed that course and filed with the Securities & Exchange Commission all the data which we have sent out to bondholders, and that consists of two letters which I have here in court, and which I am willing to file with the Court if it is required, but I do not think it is necessary to clutter up the

record with them. However, we will file them if it is so desired.

The Court: I think that answers the question.

Mr. Smith: Yes, thank you very much.

Mr. Ballard: I represent the Massachusetts Mutual Life Insurance Company and the Prudential Insurance Company of America, which companies filed objections to the Plan and a supporting brief, and they have been permitted to intervene in this proceeding.

I have witnesses in the court room who can prove the ownership by these companies of the Terre Haute securities, but in the interest of saving time I will simply
1863 state what that ownership is if there is no objection on the part of counsel.

The Massachusetts Life Insurance Company owns $200,000 of Southern Indiana [redacted] and $500,000 of Terre Haute First and Refunding 5's.

The Prudential Insurance Company of America owns $500,000 of Terre Haute First and Refunding 5's, and $500,000 of Terre Haute Income 5's.

Mr. Alsop: Your Honor, for the sake of being clear in detail, I might state the amount of the several issues which we represent.

The Committee represents $1,704,000 of the Terre Haute First and Refunding 5's, $804,000 of the Southern Indiana 4's, and $31,000 of the Bedford Belt 5's.

Mr. McSwaine: If the Court please, I represent the Terre Haute Income Bondholders' Committee which is in the process of qualifying with the S. E. C.

As yet we have not solicited the income mortgage bondholders but have, by reason of the ownership of the individual members, $199,100 principal amount of bonds.

There is no evidence which this Committee wishes to offer at this time.

1864 May I make one more statement? This Committee has come in under the broad order of Judge Wilkerson saying that any party in interest might file objections and I expect to serve notice and will ask leave to intervene so that we will be formally a party of record.

The Court: Does that finish the Terre Haute group?

Mr. Ballard: Yes.

The Court: Who is next on the list?

Mr. FitzGibbon: If your Honor please, I have some questions to ask of Mr. Severs.

J. W. SEVERS; called as a witness on behalf of the Terre Haute Group, having been previously duly sworn, was examined as follows:

Direct Examination by Mr. FitzGibbon.

Q. Mr. Severs, have you prepared a statement from the records of the bankruptcy trustees?

A. Yes, sir, I have.

Q. Will you please state what that statement is?

A. It shows the amount of indebtedness to the Reconstruction Finance Corporation as of September 1, 1940,
collateral pledged with and cash held by Chemical
1865 Bank and Trust Company, as trustee under Chicago, Milwaukee, St. Paul and Pacific Railroad Company first and refunding mortgage.

As to that, I would say that we have estimated the amount of cash that would be paid into the trustee subsequent to September 1, 1940.

Q. That item is on page 3 under 3-b, is it?

A. That is right.

Q. Except for that item, all of the information shown here is correctly shown by the books of the bankruptcy trustees?

A. It is actual and correct.

Q. What about the interest on the notes shown under 1, A and B?

A. What interest?

Q. Is there any overdue interest?

A. On the Reconstruction Finance Corporation loans?

Q. Yes.

A. No, sir. That interest is paid currently as it matures under continuing court authority.

Mr. FitzGibbon: If your Honor please, I ask that this document be received in evidence as fifty-year 5's Exhibit 27.

The Court: Who do you represent?

1866 Mr. FitzGibbon: The Guaranty Trust Company of New York and Merrel P. Gallaway of the fifty-year 5s. That is subordinate and lien to the first and refunding mortgage referred to there. Mr. Pantaleoni also offered this exhibit, representing a Committee that has to do with the interest of the fifty-year 5 per cent bonds here. That

is, certain of the individual holders. I represent merely the trustees of the mortgage.

The Court: Why do you introduce this exhibit?

Mr. FitzGibbon: Because the information as to the R. F. C. notes and collateral, and also the collateral held under the refunding mortgage, was collected in several exhibits. Further than that, this brings up to date the amount which is due for principal on Series B of the collateral notes referred to. The serial notes and certain of the interest has been paid since the record was closed before the Commission.

Also, if you will turn to page 3 you will find that these amounts which are held in cash by the trustees of the first and refunding mortgage are larger than they were at the time the record was closed before the Commission.

The Court: Who is next to be heard?

1867 Mr. Whitlock: The generals, your Honor.

Mr. Sykes: If the Court please, I offer in evidence a report of the investigation of the Interstate Commerce Commission on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in 1928. There were a number of factual findings and it contains a great deal of matter germane to this whole issue. Also in regard to the Western line.

Mr. Oliver: Your Honor, I have no objection to it but it seems to me it is encumbering the record with matter which can be referred to.

Mr. Sykes: Well, I do not suppose it needs to be printed.

The Court: It is an official document, I take it.

Mr. Sykes: Yes.

The Court: Well, why cannot reference be made to what it is and that record can go to the purpose you have in mind?

Mr. Sykes: Well, can it be received in evidence.

The Court: You want the record to show it is before the Court so that reference can be made to it, do you?

Mr. Sykes: Yes.

The Court: All right. You can mark the date, or whatever it is, so that we will know what we are talking

1868 about.

Mr. Sykes: It is reported in 131 I. C. C. on page 615.

Mr. Ballard: If your Honor please, if I may be heard further in the light of what has just been offered, I would like to make similar reference to the report of the Inter-

state Commerce Commission in 131 I. C. C., page 673 in the matter entitled, "Finance Document No. 6240, Chicago, Milwaukee and St. Paul Reorganization." Mr. Sykes' was the Chicago, Milwaukee and St. Paul investigation. The one I refer to appears in the bound volume immediately after the same one Mr. Sykes referred to.

The Court: Yours may go in in the same way that Mr. Sykes' went in, that is, by reference.

Mr. Ballard: Thank you.

The Court: Now, who is next?

Mr. Whitlock: The Milwaukee and Northern.

Mr. Marsh: I represent the City Bank of New York as Trustee under the first mortgage and under the consolidated mortgage of the Milwaukee and Northern Railroad Company.

The record contains as I. C. C. exhibits 141, 142, 156, and 181, statements showing the earnings and ex-
1869 penses of the properties subject to the two Milwaukee and Northern mortgages and I believe it might be convenient to give the years subsequent to those covered by those exhibits, those carried through 1936, and I have asked Mr. Severs to prepare statements for 1937, 1938, and 1939.

J. W. SEVERS, called as a witness on behalf of the Milwaukee and Northern Group, having been heretofore duly sworn, was examined and testified as follows:

Direct Examination by Mr. Marsh.

Q. Mr. Severs, you have prepared such statements, have you not?

A. I have, yes.

Q. Will you produce them, please?

A. Yes, sir. (Producing documents.) That includes the formula by which they were prepared.

Q. You also have prepared, have you not, a statement of the formula under which these statements of earnings and expenses were prepared and also the segregation between the Northern lines which were subject to the first lien of the consolidated mortgage loan, and the line south of Green Bay which were subject to the lien of both
1870 mortgages?

A. That is right.

Mr. Marsh: I offer in evidence these four exhibits as Milwaukee and Northern Exhibit 28, being the 1937 statement; Milwaukee and Northern Exhibit 29, being the 1938 statement; Milwaukee and Northern Exhibit 30, being the 1939 statement, and Milwaukee and Northern Exhibit 31, being the formula on which the computation was based.

The Court: Let them be received in evidence.

(Whereupon the said documents so received in evidence by the Court, were marked respectively MILWAUKEE AND NORTHERN EXHIBITS 28, 29, 30, and 31, and are in words and figures as follows, to-wit:)

1871 Mr. Marsh: Now, Mr. Severs, will you take Exhibit 28, which is the 1937 statement? Under the second box there, "Railway Operating Expenses", the second item is entitled, "Maintenance of Equipment." Now, is it not true that that item includes depreciation as well as maintenance expenses?

A. Yes. Depreciation is a primary account of maintenance of equipment. The depreciation of the equipment which was used by the Milwaukee and Northern is included in that sub.

Q. Well, now, is the depreciation based on the units of equipment actually assigned to the Milwaukee and Northern, or is it not prorated a pro rata amount of the total depreciation of equipment for the whole system based on locomotive miles or some factor of that kind?

A. Well, it is the proportion of system expense for depreciation assigned to the Milwaukee and Northern according to the number of miles run by the equipment that is assigned and used on the Milwaukee and Northern so in substance it is as near, actually, as can be an ascertainment of the depreciation unit applicable to the equipment used on the Milwaukee and Northern.

1872 Mr. Smith: Is this evidence offered in support of any objection to the plan?

Mr. Marsh: No. This is simply to bring the record down to date on the Milwaukee and Northern lines because there have been earnings on other parts of the system subsequent to 1936.

Mr. Smith: Are you objecting to the Plan?

Mr. Marsh: No, I am not. I filed a statement saying we did not object to the Plan.

Q. Mr. Severs, this matter of depreciation, though, it is based on the ratio of locomotive miles and if there is a

difference in the capacity of the locomotives, that is not reflected in the figure, is it? That is, it is thrown by locomotive miles into the computation without regard to the size of the locomotives.

A. That is true.

Q. Then the item in the second box, which is entitled, "Income Items", under that there is a sub-item entitled, "Equipment Rents", and under that item there is shown, "System Equipment—Interest Rental." Now, that is explained in the formula, Milwaukee and Northern Exhibit 31, as a rental at 5 per cent on system equipment assigned for use on these lines, is it not?

1873 A. That is true.

Q. And that item would be increased or decreased accordingly as that 5 per cent was modified. If the rate of 5 per cent was too high then that item of equipment rental charge would also be too high, and vice versa.

A. That is so, but I do not admit it is too high.

Q. No. I am not arguing it at all.

Then also, if it should be held that the Milwaukee equipment, which is assigned for use and actually in use on the Milwaukee and Northern lines, should be treated as a matter of law as subject to the lien of the mortgages, similarly that charge would be eliminated, would it not?

A. I would like to have the question again.

Q. All right.

(The question was read.)

The Witness: That is true.

Mr. Marsh: Q. In other words, if it was the Milwaukee and Northern equipment there would be no rental charge.

A. No.

Q. Now, would you explain very briefly the item appearing at the bottom of Milwaukee and Northern Exhibit 28 under the figure of net income after interest, that

1874 is, this adjustment for capital expenditures less salvages?

A. Well, the figures as shown represent the amount expended for additions and betterments on the property subject to the lien of the first and consolidated mortgages as shown. From that has been deducted the salvage recovered, charges to operating expenses not requiring cash outlay,—principally property retired. That is property retirements resulting in a charge to operating expenses for which there has been no cash disbursements.

Q. Then, will you explain also very briefly the further item at the extreme foot of the exhibit which is entitled, "Milwaukee System Earnings from Freight Traffic Interchanged with Milwaukee and Northern Lines"?

A. Well, the proportion of freight revenue as shown in that block of $1,783,399 represents the proportion that accrues to the system other than the Milwaukee and Northern lines for traffic interchanged between new system and the Milwaukee and Northern lines. That is the estimated expense of handling such freight on system lines at the operating ratio for the year.

Q. And finally the item of "Net Earnings," is the difference.

1875 A. That represents the net earnings after operating expenses of handling traffic on the system that has been received or forwarded to the Milwaukee and Northern lines.

Q. What you have said under the statement for 1937 would apply to the corresponding items on Milwaukee and Northern Exhibits 29 and 30 covering the two subsequent years, would it?

A. Yes.

Q. Is there any item on the 1939 statement under the capital expenditure title representing a non-recorded transaction?

A. Yes. There is a maintenance of way and structures charge of $168,000, which is an item which should be treated as extraordinary. It represents the writing out of the capital account of a short piece of line that was replaced by another line. In other words, the line was relocated for economical reasons. It was across and near a mine that caused the bank to slide, and it was very expensive to maintain. In order to maintain it it is my recollection that we had to keep a pumper and machinery there to drain the water, and by this relocation we saved

1876 considerable expense in maintenance.

Q. So that the Milwaukee and Northern lines will not have that item of $168,000 to face again.

A. That is so, but neither will they have the credit or cash to be applied against additions and betterments as shown in the block there.

Mr. Marsh: That is all.

Mr. Hoffman: Your Honor, I, together with Messrs. Sabath, Perlman, Goodman & Rein of this city, represent

the individual bondholders of the Milwaukee and Northern and we, contrary to the position taken by our trustee, do object to the Plan.

Now, I take it first that the record before the Interstate Commerce Commission is before this Court in full and that no exhibits or testimony before the Commission may be repeated here. Am I correct?

The Court: That is what I understood.

Mr. Hoffman: Also, may it be understood, or it is your Honor's ruling, that the printed record in the proceeding before the Interstate Commerce Commission may be considered as a part of these proceedings with the same force and effect as if introduced here?

The Court: What about that? There is no need of introducing the printed record here, is there?

1877 Mr. Smith: Your Honor, the record is exceedingly voluminous. It comprises six or seven, I think, large volumes, and I think we would object to having the record extended to any such scope as that.

The Court: Why do you want that?

Mr. Hoffman: There are in the printed record certain petitions of the trustee and orders of this Court to which we will want to make reference both in oral argument and otherwise, as supporting our position. I would see no need of reintroducing such petitions and orders as a part of our record here.

Mr. Whitlock: There are several large volumes.

The Court: He says he just wants it understood that they are available for reference to him when he makes his argument.

Mr. Burgess: I have no objection to him using them in argument but we will have to know what is in the record.

The Court: The record is now made, isn't it?

Mr. Burgess: In this proceeding before the Interstate Commerce Commission, yes, but that has nothing to do with this case here.

Mr. Hoffman: Your Honor, I get Mr. Burgess' point. Maybe we could cover this point, Mr. Burgess, by con-

1878 sidering as a part of this record with the same force and effect as if introduced here, the numbers of the pages of the record before the Interstate Commerce Commission that I will recite to the reporter when we are through.

Mr. Burgess: Oh, you may do that.

Mr. Hoffman: Yes, of course.

Mr. Burgess: Of course, we have no objection to anything that is designated so that we know what it is, but I think when this record before the Court is closed, we should know what is in it and what is not in it.

The Court: Yes. I understand.

Mr. Hoffman: We will later furnish the reporter with the pages we want to be considered as being introduced.

Cross-Examination by Mr. Hoffman.

Q. Mr. Severs, the Milwaukee Road acquired the Milwaukee and Northern in about 1892, is that correct?

A. I cannot give you the specific date, but it was deeded to the Milwaukee Road, according to my recollection, in 1893.

Q. The Milwaukee and Northern is in general what you would denominate as your Superior Division. Is that 1879 correct?

A. For the most part the Milwaukee and Northern lines comprise the Superior Division.

Q. Certain minor exceptions, not very important, is that right?

A. That is right.

Q. Now, have you kept separate records of the Superior Division since the time of the acquisition of the Superior Division?

A. Well, the answer is "No."

Q. From what date, if any, did you keep separate records in respect to either the Superior Division or the Milwaukee and Northern properties?

A. Well, for the first three years after the Milwaukee, I should say the old St. Paul company, took over for operation the Milwaukee and Northern, separate accounting records were kept.

Q. Now, do you have any—

A. Excuse me. I haven't completed. During that time and up to about 1917 I have no knowledge as to whether there was a separate accounting for the Milwaukee and Northern or for the Superior Division.

Q. Now, in respect to these early records, do you have any information or recollection as to what, if any, 1880 excess earnings were shown by the Milwaukee and Northern over and above bond interest on all the Milwaukee and Northern bonds?

A. You mean after interest available for other corporate purposes?

Q. Yes, including dividends.

A. Well, I am only guessing but I should say it would average in those three years something in excess of $200,000.

Q. All of which directly or indirectly went into the treasury of the old St. Paul, is that correct?

A. I cannot say as to that because I do not know in 1890 and 1891 and 1892 as to whether the Milwaukee retained the income or not.

Q. But, dividends were paid.

A. Oh, dividends were paid, yes.

The Court: May I inquire why you are going back that far?

Mr. Hoffman: Yes. These mortgages are dated in 1888 and 1894. This was originally a separate company. The earnings have never been segregated and excess earnings are many times more than sufficient to pay off our bonds and now they are giving us junior stock and preferred stock instead of our bonds.

1881 Mr. Burgess: Your Honor, it isn't the same company that existed at that time and I object to the question. The Chicago, Milwaukee and St. Paul Railroad Company has passed out of existence.

Mr. Hoffman: This is the successor company by reorganization. It is the same company in the eyes of the law.

Mr. Burgess: I object to the question as immaterial and irrelevant.

The Court: I yet do not see why you are trying to do this. I do not see what you are attempting to do is material to this inquiry.

Mr. Hoffman: Your Honor, our mortgages give us a right to certain principal and interest. If the income from our lines were separated, just as if we had a mortgage on a separate building, that income would be applied to the principal and interest on our mortgage. We have not been paid any interest for two or three years, I forget the exact period of time. The bonds came due about three or four times and after each time they were extended. All the excess earnings from our mortgaged district were kept either by this debtor or its predecessor in interest, the

1882 old St. Paul, and I want to show that in equity if we had marshalled those earnings and we were given the

benefit of them, our bonds would be paid off in cash or we should get prime first class new securities for our bonds instead of junior securities and preferred stock.

The Court: When did you find out this condition existed?

Mr. Clay: May I interrupt to submit, your Honor, that the only earnings material here are the earnings since the default of the bankrupt in 1935.

The Court: When did you first learn of the situation?

Mr. Hoffman: At the time the road filed in reorganization.

The Court: It was reorganized in 1928.

Mr. Hoffman: Our trustee did not appear in that 1928 reorganization. These bonds were supposed to remain undisturbed in the 1928 reorganization.

The Court: Nothing was said or done about the situation then?

Mr. Hoffman: No, nothing was said or done about the situation then, but I do not concede that the fact that the trustee thought it was unnecessary to appear that he blocked the interest of the security holders at this time in this reorganization. The 1928 reorganization plan 1883 provided that these bonds should be assumed by the new company, principal and interest. Afterwards some question was raised as to whether the new company had assumed it, but that is what the Plan provided, and undoubtedly the mortgage trustee at that time, feeling that the bonds were fully secured, saw no reason to go into the matter.

Mr. Burgess: Your Honor, may I submit that these parties appeared and offered evidence before the Interstate Commerce Commission and we now object to this as incompetent and irrelevant.

Mr. Hoffman: This goes to the allocation of securities upon which your Honor must pass.

The Court: Well, I am not going back forty or fifty years to find out what these things are all about. Now, if your clients were satisfied with this reorganization back in 1928, which was an equitable proceeding, I do not see how they can come in twelve years later and say everything is all wrong.

Mr. Hoffman: I cannot say that our clients were satisfied back there.

The Court: Well, the record shows there is no objection.

Mr. Rein: Your Honor, may we treat this as of the date of the filing of the petition?

1884 The Court: That was 1935.

Mr. Rein: Yes.

The Court: He is going back to 1928. If you will come down to 1935 we will listen. But, if you insist on going back further, the objection will be sustained.

Mr. Hoffman: Your Honor, it is claimed by us that the mortgages provided that the equipment which was under the mortgages originally had to be replaced. Mr. Clay has suggested that our rights came into being as of the date of the default. I do not know when that default took place. If I can elicit it from this witness, will your Honor permit me to go back to that time?

The Court: Well, now, listen; we are not going to be bargaining around here. Did you introduce this testimony before the Interstate Commerce Commission?

Mr. Hoffman: Not this particular testimony. We raised the point and it was conceded by counsel for the Debtor before the Interstate Commerce Commission that equipment defaults do exist under our mortgages. That was conceded before the Interstate Commerce Commission and the report says those defaults amount to two million dollars, the report which your Honor has before him.

1885 The Court: What does that prove?

Mr. Hoffman: Well, that proves we should get a valuation of two million dollars additional to that which the Commission has allowed to us in our securities. We are entitled to a better allocation of securities than has been given us. Our mortgages are very small. The first mortgage is two million dollars odd, and the second is five million dollars odd.

Mr. Burgess: Your Honor, may I interpose this thought? The hearings before the Interstate Commerce Commission on this reorganization began just five years ago, five years and one month ago today. These gentlemen appeared repeatedly before the Commission in those hearings which took place during those five years. The Commission passed on this matter. Now, they have shown nothing new and there is no reason why they should clutter up this record here with a lot of material which they had the opportunity to put in, and I think they did put in before the Commission.

Mr. Hoffman: The Commission is passing before this Court for review. I believe we are entitled to bring before

this Court, subject to your Honor's ruling, whatever
1886 may be relevant in assisting your Honor, whatever is relevant in determining whether that report by the Commission should be affirmed or denied.

The Court: Well, we are not going to allow you to introduce here all the testimony that was put in before the Commission.

Mr. Hoffman: Not one word was put in before the Commission.

Mr. Clay: Your Honor, my understanding is that on that question of law the mortgage trustee is not entitled to these earnings until a demand is made. After the default the demand has to be made and I do not understand that a demand was made until after this bankruptcy in 1935.

The Court: Who are your trustees?

Mr. Hoffman: Our trustees are Mr. Marsh's clients.

Mr. Marsh: I agree with Mr. Clay's statement that there is no right to income until there has been a default and until demand has been made by the trustee or bondholders, I presume, for that income.

The Court: You represent a part of the bond issue of which he is a trustee?

Mr. Hoffman: Yes, sir, and we have differences in some respects in this reorganization although we have been
1887 allied in other respects.

Mr. Rein: We are the only ones that filed objections under these mortgages.

Mr. Marsh: In our petition for intervention we asked for the impounding of the property subject to the two mortgages but I am of the opinion that that could only take effect from the commencement of the proceeding. Now, actually, the interest has been paid on both issues of the bonds through to the installment of December 1, 1937, so the interest default was cured to that extent, and then there has been a further payment on the first mortgage. There are now certain installments in default as to which impounding of income, I think, would be applicable. But, it does not seem to go back to 1890 or 1891.

I do not want to take sides here.

Mr. Rein: Your Honor, may I say this? In passing on this plan of reorganization your Honor must necessarily approve it, disapprove it, or modify it. We are the holders of bonds secured by two mortgages. Those mortgages are on a particular property. They call for a given rate of in-

terest. There may have been or may not have been defaults in the existence of this fifty-year old mortgage.

1888 Now, when you come to the time of the filing of the petition, your Honor, it seems to me your Honor must then ascertain as of that time to what these bondholders were entitled. They were entitled to the security which is the Milwaukee and Northern branch of this system. They were entitled to compensation on their default that existed up to that time, no matter how old. They had a given right measured in terms of money, and security in terms of property, so you can go back and find out what they were entitled to by ascertaining what defaults there had been.

When this road was taken over the old St. Paul bought and received many locomotives, freight cars, passenger cars, and so on. At the time of this default the equipment was worthless. Now, aren't these bondholders entitled to consideration because of those defaults which existed continuously from the time of the default and up to the time of the filing of the petition, so necessarily it seems to me that it is necessary to ascertain something of the history of the performance of the debtor and its predecessor under these two particular mortgages.

The Court: Well, Mr. Marsh says the defaults go back only to 1927.

1889 Mr. Marsh: That is only on the interest. On the equipment the record shows the extent of the defaults existing at the commencement of this proceeding and it is a question of law as to what remedy arises for the existence of those defaults. It is just a matter of law now as to what remedy should flow from the existence.

Mr. Clay: I understand the terms of the contract do not give the bondholders any earnings until after the declaration of the default and that was not until after the bankruptcy.

Mr. Hoffman: The replacement clause in the mortgage, at least in the first mortgage, is such that we have a contract right to the equipment and the replacement of the equipment irrespective of any element of default and no declaration is necessary on that, it seems to me, when that default takes place. Does that conform to your understanding, Mr. Marsh?

Mr. Marsh: Well, I would rather not argue this case now. I have made a very thorough investigation of that question and I will say that my own view is, and I do not want to bind my client by it, that the breach of that cove-

nant gives rise to a claim which is simply a common creditor's claim and not a right to a specific performance,
1890 so to speak, because of the form of those covenants.

But, I do think there is some question about it in this circuit. There is a claim and that is why I asked the question of Mr. Severs about an item charged in the earnings statement to rental of equipment. We have enough to cover our bonds on the element of value. There is no question, as I understand it, on the record as it stands today but that the bonds are fully secured.

The Court: Where do you stand in the Plan?

Mr. Marsh: We are supporting it.

The Court: How do you appear in the Plan?

Mr. Marsh: You mean in these two issues of bonds?

The Court: Yes.

Mr. Marsh: Well, they get part payment in first mortgage bonds, part payment in income bonds, and part payment in preferred stock, the first mortgage bonds getting the new first mortgage bonds and income bonds, consolidated bonds which are second lien on the southern part of the line. We are not fully satisfied with that treatment, your Honor, but we feel there has got to be an end to the proceeding some day and it is better for our bondholders to get what the plan gives them than fight another three or four years and perhaps get a little better, and
1891 that is why I support the Plan and am not filing objections. We do think what we get is very meagre, however.

Mr. Hoffman: At page 6895 of the printed record, being the report of the Interstate Commerce Commission, they find that vacancies in equipment up to June, 1935, are estimated in excess of $5,000,000. Some question was raised as to the meaning of the covenants on the Northern mortgage with respect to a specific amount of equipment. Counsel for the Debtor concedes that a default exists in this respect. That is two million dollars. We get 25 per cent in new mortgage bonds on a $5,000,000 issue, although the value of our property is $2,000,000.

Whether the trustee wants to support the Plan or not, the individual bondholders say that they do not think they have been treated fairly.

Mr. Clay: The mortgage I assume contains a provision which would allow a certain percentage of bondholders to declare a default. Can you give me the provision?

Mr. Hoffman: It is an old mortgage and contains certain provisions to permit the trustee to act.

Mr. Clay: Yes, but on request of a certain percentage of the bondholders the trustee is compelled to declare 1892 a default.

Mr. Hoffman: Yes.

Mr. Clay: I respectively submit that these bondholders were asleep on their rights.

Mr. Hoffman: Well, whether that is true or not, we are not in a court of equity and that is a very curious position for the Reconstruction Finance Corporation to take.

The Court: I will let you go back to 1928 but not further.

Mr. Hoffman: All right. That will be satisfactory.

Mr. Clay: I would like to mention to the Court that we have some of these bonds.

The Court: Which side are you on? Are you with Marsh or Hoffman?

Mr. Clay: We are supporting the Plan.

Mr. Hoffman: Q. Mr. Severs, do you have earnings statements for the Milwaukee and Northern Division back in 1928?

A. No, sir.

Q. Did the Debtor keep a segregation of earnings back in 1928 of the Superior Division of the Milwaukee & Northern properties?

A. No, sir.

1893 Q. Is there any information in your possession or in the possession of the Debtor that would throw any light on whether or not the properties covered by the Milwaukee & Northern mortgages have provided excess earnings over and above mortgage interest from the period of 1938 for the Milwaukee Road?

A. I have no such information.

Q. What is the earliest information that you have?

A. For the year ended September 30, 1933.

Q. Is that information comprised in an exhibit which was offered before the Interstate Commerce Commission as the exhibit which I now show you?

A. It was entered as an exhibit before the Interstate Commerce Commission.

Q. Upon the paper which I have just used to refresh your recollection does there appear an item showing the Milwaukee net earnings, the net earnings to the Milwaukee

Road for its proportion of traffic interchanged with the Milwaukee & Northern lines?

A. Yes.

Q. And that item is what? How much does it amount to?

A. The statement states that the Milwaukee net earnings from its proportion of traffic interchanged with
1894 Milwaukee & Northern lines was $483,065 in the year ended September 30, 1933, but there is no reference here to show the same information as to the net earnings of the Milwaukee & Northern lines on account of the traffic originating on the Milwaukee system lines other than the Milwaukee & Northern.

Q. That is right. Now, this statement also shows net income after interest on the Milwaukee & Northern mortgage as being a deficit of $95,000. Is that correct?

A. $95,269 after interest.

Q. After interest.

A. Yes.

Q. Now, in arriving at your figures how much did you charge against the Milwaukee & Northern for interest upon the equipment supposedly used on the Milwaukee & Northern lines?

A. I will have to get a copy of that exhibit before me.

Q. You may have this. (Handing the witness a document.) It is my only copy.

A. $132,500 for the year ended September 30, 1933.

Q. How much did you charge for depreciation charges in that statement upon the equipment supposedly
1895 allotted to the Milwaukee & Northern lines?

A. Well, that information does not show on this statement.

Q. I show you a paper prepared by you and handed by you to me in the early part of this week in order to refresh your recollection and I ask you whether that refreshes your recollection as to the amount of depreciation which was charged in 1933 in these accounts in arriving at the interest.

A. You mean for the year ended September 30th?

Q. Correct; the amount of depreciation.

A. For that period it was $150,006.

Mr. Hoffman: I will ask that the paper be marked for identification because I will be using it again.

(The document was marked Milwaukee & Northern Exhibit No. 32 for identification.)

Mr. Oliver: Depreciation on what?

Mr. Hoffman: On equipment allotted to the Milwaukee & Northern lines.

Q. Now, if the item of the interest rental and the item of depreciation were eliminated from the 1933 statement, how much interest would you show as having been earned on the Milwaukee & Northern lines after payment of full interest?

1896 A. Approximately $187,000.

Q. Now, no part of that was paid to Milwaukee & Northern bondholders, is that correct?

A. Will you repeat that?

Q. No part of it was paid to Milwaukee & Northern bondholders.

A. The Milwaukee & Northern bondholders during that period were paid full interest.

Q. Yes, and this is in excess of full interest. This $187,000 would be in excess of full interest on the basis I have suggested.

A. Oh yes, on the basis you have suggested, but not otherwise.

Q. Now, for the year 1934—does that statement show 1934 as well?

A. Yes, sir.

Q. For the year 1934, after providing for full interest upon all of the Milwaukee & Northern bonds, what is the result in net income after interest?

A. $46,511.

Q. Now, included within the charges against that property is an item for interest rent on locomotives, freight and passenger cars, the same as for 1933, is that correct?

1897 A. Yes.

Q. $142,000?

A. Correct.

Q. How much depreciation was charged in 1934 on equipment allegedly allocated to the Milwaukee & Northern lines?

A. I will have to have that paper again.

Q. Oh, excuse me. (Handing the witness a document.)

A. About $285,000, being the summarization of the charge for equipment rentals plus depreciation on equipment which was charged against income.

Q. What would be the total excess over full interest

on the basis I have suggested on eliminating equipment rental and eliminating depreciation on the equipment?

A. $331,000.

Q. Over and above full interest on Milwaukee & Northern bonds?

A. Correct.

1898 Q. And in addition to that there were system earnings to the Milwaukee, were there not, on the interchange of traffic?

A. Well, I don't quite understand that question. You mean—

Q. Let me rephrase the question. During that same period were there system earnings to the Milwaukee, net earnings for its proportion of traffic interchange with the Milwaukee and Northern lines?

A. You are talking about net earnings, you mean as it is shown on the statement here?

Q. Yes. Well, the statement is correct, is it not?

A. Oh, yes. The statement is correct.

Q. And it was prepared by your office?

A. That is correct.

Q. If the statement shows, as it does, this $509,346 "Milwaukee Net Earnings for its Proportion of Traffic Interchanged with Milwaukee and Northern Lines," you have no doubt that that is correct, have you?

A. Oh, I am quite sure it is.

Q. And that is a correct figure?

1899 A. That is a correct figure. But I want to say that I do not want the Court to get the impression that there is no compensation between this figure and what would be the amount the system lines contributed to the Milwaukee and Northern.

Q. Yes, but I am not—

A. There is that compensation.

Mr. Burgess: Let him finish his answer, please.

Mr. Hoffman: Yes. We are confining ourselves for the moment to the contribution of the Milwaukee and Northern.

A. All right.

Q. Now, do you have any figures for 1935?

A. My best recollection is that we have not.

Q. Do you have any knowledge or information in respect to the 1935 figures, as to whether or not the Milwaukee and Northern Road earned more or less than its interest charges during that year?

A. I think we filed a petition in the District Court to pay interest on the Milwaukee and Northern bonds; sometime during August, 1935, and I think we made an estimate of what the earnings would be and so stated it in the petition.

1900 Q. The figures in the petition to which you refer were prepared by you or under your direction; is that correct?

A. No. Those figures were not prepared under my direction.

Q. Are you familiar with those figures?

A. Well, I perhaps was at that time.

Q. I call your attention to a petition for order No. 100, filed May 16, 1936, appearing at pages 1327 et seq. of the printed record, and ask whether that will refresh your recollection as to the figures for 1935. I think the figures are in here somewhere.

A. Well, it does refresh my recollection.

Q. What are the figures for 1935 as nearly as you can gauge them now on the basis of the petition to which I have referred?

A. Well, the result is that there was net income after interest of $78,451.

Q. And there was a charge also in 1935, was there not, for a similar item for interest and rental on equipment?

A. That is so.

1901 Q. What did that amount to?

A. $152,000.

Q. And the depreciation item amounted to how much?

A. Approximately $130,000.

Q. So computing 1935 earnings on the basis which I have suggested, how much was earned by the road over and above full interest on the Milwaukee and Northern bonds?

A. Based on your assumption, $358,000.

Q. What is the similar figure which we have been discussing, that is to say, the system earnings on the interchange with the Milwaukee and Northern for that year?

A. $414,971.

Q. Now, you also prepared or there was also prepared in your office figures for the year 1936; is that correct?

A. That is correct.

Q. Do you have such figures now before you?

A. No. I haven't them before me.

Q. Well, I call your attention to a document which appeared as Exhibit 141 before the Interstate Commerce Commission and ask you whether that refreshes your 1902 recollection as to the 1936 figures.

A. It does.

Q. What are the net earnings of the Milwaukee and Northern lines for the year 1936 over and above all interest charges on all the bonds as appearing upon that statement?

A. That income after interest is stated at $171,677.

Q. I used in my question the words "as appearing upon that statement."

A. That is correct.

Q. I mean, that is the correct figure, is it not?

A. Yes. But I want to say as to this and those that you have referred me to prior that they include no deductions or additions made to the property.

Q. Yes. I am speaking of income.

A. Yes.

Q. Now, how much is included in that statement for interest on equipment allegedly alloted to the Milwaukee and Northern lines?

Mr. Oliver: If your Honor please, we don't like to interfupt this examination except to say that these exhibits were all before the Commission and he is merely com-
1903 menting on Exhibits already in the record.

The Court: Are these exhibits already in the record?

Mr. Oliver: Well, this exhibit is.

A. This exhibit is before the Interstate Commerce Commission.

The Court: Well, then the objection will be sustained.

Mr. Hoffman: Well, then,—all right. I won't argue with the Court on that.

The Court: If there is an exhibit already in the record you can refer to it in your argument, can't you? What is the use of asking those questions if this exhibit shows some figure?

Mr. Hoffman: I am asking him to make the computation showing the excess earnings, that is all.

The Court: If you asked him that question that is all right, but why all these other questions if those figures already appear in the exhibits?

Mr. Hoffman: All right. That was just a preliminary question.

Q. Computing the net earnings of the Milwaukee and Northern lines for 1936 on the basis I have suggested, 1904 namely, eliminating the interest on equipment allegedly to the Milwaukee and Northern and eliminating depreciation, how much was there earned above full interest on the Milwaukee and Northern bonds for 1936?

A. $432,413.

Q. And the contribution to system earnings on the basis shown is how much?

A. $524,915.

Q. Now, 1937 showed a change in trend, did it not?

A. In what respect?

Q. Well, I call your attention to Exhibit No. 28 introduced today in these court proceedings and ask you whether on the basis of the exhibit as so prepared and produced a change in trend is indicated in the earnings of the Milwaukee and Northern lines.

A. You will have to explain that question.

Mr. Hoffman: I withdraw the question then and I will ask you another question:

Q. What amount, if any, was earned towards full interest on Milwaukee and Northern bonds in the year 1937?

1905 A. $305,672.

Q. And full interest amounted to $323,505?

A. That is correct.

Q. Showing interest short of being earned in full of $17,833?

A. That is right.

Q. Now, if that had been, if those figures had been computed upon the basis suggested by me in respect to equipment, how much over and above full interest on the Milwaukee and Northern bonds would have been earned during that year?

A. $283,413 before deducting capital expenditures.

Q. Now, the railway operating revenues for 1936 were how much? 1936, I am asking you now. I am going back a year.

A. I don't have 1936 in front of me. May I borrow your copy?

Q. Here it is. $3,254,000.

A. Railway operating revenues?

Q. Yes.

A. They were $3,254,505.

Q. And the railway operating revenue for 1937 was how much?

1906 A. $3,299,454.

Q. Approximately the same; is that correct?

A. That is correct.

Q. So that the difference in result must be allotted to railway operating expenses or other income items; is that correct?

A. That is correct.

Q. What were the chief items of increase in expense between 1936 and 1937?

A. Well, the operating expenses in total are up about $200,000.

Q. On the same gross business?

A. Substantially the same gross business.

Q. Substantially the same gross business?

A. Yes, sir.

Q. And the principal item of increase is in what particular item, in what account would you say?

A. Well, the increases are in maintenance of equipment and in transportation expenses.

Q. Larger amounts for maintenance of equipment to handle practically the same volume of traffic; is that right?

A. Well, I don't know if it is the same amount of traffic. It is in dollars.

1907 Q. The same dollar amount of traffic?

A. Yes, but that does not follow that it was the same amount of traffic.

Q. You would not know, would you, whether the traffic was greater or less?

A. I would if you let me compare it.

Q. Yes; will you compare it, please, and let us know?

A. I notice a very pronounced increase in passenger revenue and a decrease in freight traffic, which indicates to me that it costs more to operate and you have less net in passenger revenue than you do in freight.

Q. Do you know whether you are continuing that additional passenger service on the Milwaukee and Northern lines at the present time? Do you know?

A. Yes; I know.

Q. Are you in fact continuing it?

A. We are.

Q. You are?

A. Yes. As a matter of fact, by continuing it we have held up the revenues of the Milwaukee and Northern quite substantially.

1908 Q. What particular revenues have been held up by that? That is very interesting.

A. I notice that passenger revenue increased 1938 over 1937 and in both—and in 1938 over 1937 and substantially over 1936.

Q. Did you notice that the cost had increased in one item alone in excess of over $52,000 over 1936?

A. I don't recollect just what you have in mind. I don't see what you had in mind.

Q. Under miscellaneous operations, 1939?

A. Over 1936?

Q. Yes.

A. I notice that in—I will have to have your exhibit, that other one, again, in order to answer that. I notice miscellaneous operations here.

Q. Do you want the exhibit itself?

A. That in 1937 they are $23,000 over, I think it was 1936.

Mr. Hoffman: Here it is.

A. Yes. Miscellaneous operations increased about $23,000 in 1937 over 1936.

Q. That item, would you say, or was that due to 1909 that same passenger operation?

A. In part, yes. But in addition to that that mostly is the operation of a dining car on that line. If you will notice, your incidental revenues went up about the same amount.

Q. That was your gross?

A. No, no. I am talking about the primary account.

Q. Yes.

A. The incidental. Here is $20,000, $21,000 in 1936 and $40,500 in 1937. So I would say that that increase was just about offset.

Q. Do you conclude from that that the dining car paid for itself or operated at a loss?

A. Well, I think it is generally admitted that dining cars do operate at a loss. Not all of them, however. We have dining cars on our road that are not operated at a loss.

Q. That does not apply to this one that we are speaking of?

A. Well, I would not know about that.

Q. Now, in 1938, Exhibit No. 29 before this Court, what was the income available for interest on the Mil-
1910 waukee and Northern bonds, the income available from the Milwaukee and Northern division?

A. There was a deficit.

Q. How much?

A. $207,554.

Q. Now, isn't it a fact that included within that deficit there is an item of $33,000 for retirements that does not appear upon the statement, similar to the $168,000 item for the subsequent year?

A. Well, I think a part of that retirement charge on account of that line was included in 1938 but the amount of it I am not able to say.

Q. Will you refresh your recollection by consulting your assistant, Mr. Stephenson, who, I believe, has the information and supply the answer now for the record?

The Court: Come on, let us examine one witness at a time.

The Witness: I will get it, if he will get it for me.

Mr. Stephenson: $33,000.

A. $33,000.

Mr. Hoffman: Q. Computing the income on the basis I have suggested what would the result be for 1938?

1911 A. By "you suggested," you mean by—

Q. In respect to the equipment.

A. You mean by adding or deducting the equipment accounts and the depreciation?

Q. Yes.

Mr. Smith: Your Honor, it occurs to us that counsel has sufficiently illustrated the point that he is trying to make in respect to these several years and that this is largely an argument. We object to it as repetitious and mere computation that is being made largely for the purpose of brief and argument.

The Court: What do you say to that?

Mr. Hoffman: I say it is not argumentative at all. I say it is a conclusion of fact that may be drawn from the exhibits submitted by this particular witness.

The Court: You have an exhibit for each year?

Mr. Hoffman: Yes.

The Court: And you are drawing lessons for each year?

Mr. Hoffman: Yes.

The Court: And each lesson is the same?

Mr. Hoffman: Each lesson is based, however, on a 1912 different computation.

The Court: I understand, but the computation you are asking this witness to make you can make yourself, can't you? Why shouldn't you take that exhibit and make your own computation for use in your argument?

Mr. Hoffman: Well, that is for the convenience of the Court and the record and we have the right to draw that inference from those exhibits. There is one more exhibit I would like to ask about that has a slightly different result.

The Court: All right. Let us get down to that.

Mr. Hoffman: Yes.

The Court: These things appear all the same to me. And it appears as it is some work that you might do yourself in preparing for your argument.

Mr. Hoffman: Q. For the year 1939, Exhibit No. 30, you say there was a deficit available for interest of how much?

Mr. Hoffman: This is one that is a little different, your Honor.

A. $161,484.

Q. And in arriving at that figure you have in-
1913 cluded $168,000 for an extraordinary retirement charge, haven't you?

A. That is right.

Q. So that if the extraordinary retirement charge were omitted you would arrive at an available surplus for interest of about $8,000; isn't that right?

A. Well, that would be so, but then you can't omit it. That is a matter of fact. That is something that has got to be absorbed, either here or some place else.

Q. Or in the capital account?

A. No, not in the capital account. I don't agree with you on that.

Q. It is not a proper charge against one year's earnings, is it?

A. Yes, it is.

Q. What was retired here?

A. A small section of line.

Q. How long had that line been in existence?

A. Oh, I would not be able to answer that.

Q. How long was the line?

A. I can't with any accuracy—

Q. You can't answer it?

1914 A. —answer it.

Q. You say that the retirement of a line in one year should be charged against that one year's earnings? I am not speaking from the point of view of railroad economy now; I am speaking from the point of view of allocation of securities and ascertaining the normal income of a branch.

A. Well, I don't think it is at all out of place either in respect of sound accounting or in the allocation of securities whether you take it in this year or whether you take it in a subsequent year.

Q. Or whether you charge it against capital account?

A. Well, you can't charge it against capital account.

Q. It was a retirement of a capital item?

A. Yes, it was a retirement of a capital item and it was replaced.

Q. It was not an earning item in any way, was it?

A. Well; the item we have replaced or the item that replaced it, certainly is an earning item.

Q. Wherein does this item that was replaced appear in your books, under what column? It appeared on

1915 the asset side, didn't it?

A. Yes. It is in our investment in road equipment.

Q. Your investment in road equipment?

A. Yes.

Q. That is an asset, isn't it?

A. Yes, sir.

Q. That is a capital item, isn't it?

A. It is an investment item.

Q. Well, isn't that investment item a capital item?

A. Well, I think you could term it that way although we generally don't.

Q. So that the retirement of that item was properly charged against the item against which it was originally charged?

A. It is credited against that.

Q. It is credited against the account to which it was originally charged?

A. That is correct.

Q. And it was originally charged into the capital account?

A. That is right.

Q. Now, adopting my suggestion, as I said, it does not.

appear in this 1939 figure, that is, the item of depre-
1916 ciation on locomotives, equipment—not depreciation
—yes, depreciation on locomotives, and so forth, which was charged as an operating expense in that year. How much is that item?

A. Depreciation charged as operating expenses in the year 1939 was $146,460.

Q. And the item of system equipment rental was $196,000 odd for the same year?

A. That is right.

Q. Now, something was said by one of the witnesses this morning in respect of an ore pooling agreement with the North Western. Are you familiar with that?

A. I am.

Q. When was that ore pooling agreement entered into?

A. I don't know the date of that contract.

Q. Approximately.

A. I know when it was effective.

Q. Yes. When?

A. March 15, 1937.

Q. Now, prior to March 15, 1937, how had ore moved, if at all, over any part of the Milwaukee and Northern lines?

A. I presume you are referring to the ore that 1917 moved from the—

Q. Iron River.

A. —Iron River branch?

Q. That is correct.

A. Or the Iron River district, up over Crystal Falls branch to Kelso and Kelso to Channing, which is a part of the Milwaukee and Northern lines, about eight miles, and from then it moved to Escanaba over the Escanaba and Lake Superior Railroad, over which we had trackage rights.

Q. So that about eight miles of that movement went over the Milwaukee and Northern lines; is that right?

A. That is right, something like that.

Q. Now, when this ore pooling arrangement was made, all the ore moved over the North Western lines, didn't it, from that district?

A. Yes, sir.

Q. And in consideration of moving all the ore over the North Western lines, the Milwaukee shared part of the expense and took part of the profits; is that correct?

A. That is correct.

Q. And the net result has been a profit; is that
1918 right, on that sharing agreement?

A. Yes. Certain months was a profit. Overall it was a profit, yes.

Q. It was a profit?

A. Yes.

Q. What proportion of that total movement did the Milwaukee get in percentage, of that ore movement?

A. Thirty-four per cent.

Q. And in routing that ore over the North Western Lines the Milwaukee and Northern lines were deprived of the haul that they had theretofore received; is that right?

A. They were deprived? I don't know that they were deprived of that.

Q. They did not get the haul that they had theretofore received?

A. That is right. We did not route it over the lines, using any part of the Milwaukee and Northern lines.

Q. What is the distance from Iron River to the Lake by way of the Milwaukee and Northern route and what is the distance by way of the North Western route?

A. I just don't know all of those details.

1919 The Court: What is it you are trying to prove now?

Mr. Hoffman: I am trying to prove now the haul. They used this ore pooling arrangement to deprive the Milwaukee and Northern lines of the traffic which it is entitled to and they do not credit it with that, although the Commerce Act provides that a railroad should route over its own lines wherever it can do so the movement of traffic. The result is—

The Court: Well, did the Interstate Commerce Commission approve this ore pooling arrangement?

Mr. Clay: I object.

The Witness: Yes, your Honor, and so did the Supreme Court.

The Court: I don't see how it could be put into effect unless they did approve it.

The Witness: They couldn't.

Mr. Clay: I object, your Honor. Mr. Severs is not a traffic man.

Mr. Hoffman: He knows the distances.

The Witness: I don't know the distances.

Mr. Hoffman: Aproximately.

1920 A. I don't know the approximate distances.

The Court: You say he knows the distances and he says he doesn't. Well, let us stop that.

Mr. Hoffman: Q. Do you know whether the distances are about the same?

A. I haven't the remotest idea. I know that there isn't much difference but as to what the distances are I just don't now.

Mr. Hoffman: Good enough.

Q. Do you know whether any portion of that profit from the pooling arrangement was credited to the Milwaukee and Northern mortgage district?

A. I know that since the ore pooling with the North Western no part of any net income has been credited to the Milwaukee and Northern lines, nor do I think it should have been, for the reason—

Mr. Hoffman: I move to strike that.

Mr. Clay: Let him finish his answer.

A. —that the ore does not terminate—

Mr. Hoffman: I move to strike the latter part of that answer.

The Court: Let him finish his answer.

A. Does not originate or terminate on the Mil-
1921 waukee and Northern lines. I can't see by any stretch of the imagination how you could expect that a line that is not involved in the haul should receive any part of the income.

Mr. Hoffman: Q. Is any part of the Milwaukee lines other than the Milwaukee and Northern lines involved in that haul?

A. Of the Milwaukee and Northern? Of the Milwaukee system?

Q. Is any part of the Milwaukee system involved in this haul other than the Milwaukee and Northern lines? You say the Milwaukee and Northern is not involved in the haul now.

A. That is right.

Q. Is there any part of the Milwaukee line that is involved in that haul?

A. Yes.

Q. What part?

A. There is that part of the line, the branch line into the mines.

Q. Yes.

A. And there is joint switch engines operated; that is,

over the lines that are alleged to be subject to the
1922 First and Refunding Mortgage, but not as far as line haul is concerned, but the ore originates at stations and on tracks of the Milwaukee road.

Q. Were you a party to any of the negotiations to this pooling agreement?

A. No, sir; I was not.

Q. Were you present at any of these negotiations?

A. No, sir.

Q. Do you know whether or not credit was claimed by the Milwaukee road by virtue of its agreement to no longer haul over the Kelso branch?

A. I don't think anything like that was ever considered. I don't see why it should be.

Q. What do you receive? Do you receive a straight mileage portion? Is this 34 per cent to which you referred, does that add up to a straight mileage portion?

A. Oh, no.

Q. What does it add up to?

A. It does not add up to anything. It was determined on the basis of the amount of traffic that was handled by the respective roads prior to the time of the ore pooling.

1923 Q. And that amount, of course, was handled over the Milwaukee and Northern branch as far as the Milwaukee was concerned?

A. Yes, that is so, as far as the Milwaukee traffic was concerned.

Q. Now, would you know or can you supply the figure as to what percentage of the mileage involved goes over Milwaukee mileage?

A. I have said two or three times that I just can't—

Q. No. This is a different question.

The Court: It means the same thing. The objection is sustained, on the part of the witness.

Mr. Hoffman: Q. Mr. Severs, could you supply the figures for 1928 through 1933 of Milwaukee and Northern earnings, showing also the amount of depreciation charged in each year?

A. No. That would be impossible to do for the reason that the waybills have been destroyed in that period. That is, up to six years prior to the present time.

Mr. Hoffman: Your Honor, Mr. Chesler will read into

the record the references to the specific petitions and
1924 orders that we have in mind and which were the subject of our discussion before the examination of this witness.

The Court: Any further questions of Mr. Severs?

Mr. Smith: Yes; I have a few questions.

Mr. FitzGibbon: Your Honor, might I have a minute? I am leaving on a train. I would like to make a suggestion in regard to the oral argument.

During the luncheon recess I spoke to Mr. Nicodemus and also to Mr. Whitlock, having this in mind: If it would be helpful to your Honor, I would like to request Mr. Nicodemus to spend about an hour or a half an hour giving your Honor the background of this case. I know that you might very well be familiar with the briefs and the reports, but I think a bird's-eye view of it would be helpful, at least to me and perhaps to you, so that when we come to particular points we can plunge into the particular aspects in which we are interested rather than to try to paint the background.

Mr. Burgess: May I interpose, your Honor? Mr. Nicodemus, only came into this case the last two or three weeks.

It has been going for five years or more before the 1925 Commission.

Mr. FitzGibbon: I don't care who does it, if any one does it.

The Court: You are against him anyhow. Why do you care who makes the opening statement? If Mr. Nicodemus wants to take over that burden it is all right with me.

Mr. FitzGibbon: I don't care who does it, if Mr. Burgess does it. He takes a non-partisan view of it and he can present that attitude to your Honor.

The Court: Is there any lawyer like that here, who has a non-partisan view?

Mr. Burgess: I have taken a non-partisan view all the way through, but I don't think I would like to make that kind of a statement.

Mr. FitzGibbon: Well, I am sure that I have a non-partisan view, but I would like somebody to make that statement.

The Court: Well, I don't imagine any one of you folks has a selfish viewpoint in it.

Mr. Nicodemus: Well, it is understood that we have until Monday morning to do that?

The Court: Yes.

1926 Mr. Nicodemus: We can do it this afternoon.

The Court: No. There is not going to be any speaking this afternoon.

Cross-Examination by Mr. Smith.

Q. Mr. Severs, is it correct that the counsel who has been examining you has asked you to restate the earnings of the Milwaukee and Northern on the assumption that certain charges of depreciation and equipment be eliminated?

A. Yes. That is what I have been trying to bring out, Mr. Smith.

Mr. Smith: Yes.

A. These restatements have been on assumptions that if certain items were eliminated then the income would be more than what is stated or what is included on the statements which we have prepared and are able to support.

Q. Well, do you know of any logical theory upon which depreciation on equipment that accrues from day to day, that is used over the Milwaukee and Northern, can be avoided as an operating cost in the management and the operation of that property?

1927 A. I know of no method through which that can be done, whether the equipment is owned by the Milwaukee system, apart from the Milwaukee and Northern, or whether the Milwaukee and Northern owns it.

Q. There is a certain exhaustion of service life in respect to that equipment each day of its operation over the Milwaukee and Northern; is there not?

A. That is so.

Q. Is that an inescapable element of operating expense on that line?

A. I think it is.

Q. As a preliminary question, is it not true that the Interstate Commerce Commission in this plan has allowed as fixed charges an amount less than the actual earnings from the property during those years that Mr. Hoffman has been talking about, 1930 to 1936, for example?

Mr. Hoffman: Fixed charges in respect to the Milwaukee and Northern properties?

Mr. Smith: Well, if the witness does not understand the question—

The Court: I don't understand the question.

Mr. Smith: All right. I will restate it.

1928 The Witness: I did not get the point either.

Mr. Smith: All right.

Q. The Commission has prescribed a certain amount which the reorganized company may pay out as a fixed charge under this plan; is that true?

A. That is right.

Q. And that fixed charge it must pay year after year or go into bankruptcy; is that right?

A. That is right.

Q. And to allow an adequate margin of safety the Commission has determined that fixed charge on the basis somewhat lower than the actual earnings during the years since 1930, has it not?

Mr. Hoffman: That is objected to on the ground that the witness is not competent to testify as to what the Commission thought.

Mr. Smith: That is a preliminary question and I so stated it.

The Court: He may answer.

A. That is my view.

Mr. Smith: Q. So that it is not necessarily true then that the security holders must under this plan in every instance take something less as a fixed charge security

1929 than the actual earnings of the property?

A. That would be my understanding.

Mr. Hoffman: That is objected to, if your Honor please, as purely argumentative.

The Court: Well, he has answered.

Mr. Hoffman. I move to strike the witness' answer out on the ground that the witness does not know of his own knowledge the things about which he has been testifying.

The Court: The motion is overruled.

Mr. Hoffman: Sir?

The Court: The motion is overruled.

Mr. Smith: That is all.

Mr. Oliver: If your Honor please, savings banks hold substantial amounts of Milwaukee and Northern bonds, about $1,265,000 of both issues. While we believed initially that the Milwaukee and Northern bonds should receive better treatment, but it would so drastically reduce the fixed charges that our banks have agreed to support the plan, feeling that they should bear their share of the sacrifice.

I would like to ask one or two questions.

1930 *Cross-Examination by Mr. Oliver.*

Q. Mr. Severs, I understood you to make some comment which I don't think you were permitted to explain in full with reference to these various earnings statements for the various years, in respect to the fact that you have made no deduction or made no allowance for the competitive earnings of the Milwaukee. In other words, the Milwaukee routed certain traffic over there which is not referred to in the exhibit.

A. Well, what I meant is this, or tried to bring out, that this statement merely shows what the system other than the Milwaukee and Northern lines earns on traffic that is alleged to be contributed by the Milwaukee and Northern.

Q. That is originated on the Milwaukee and Northern?

A. That is right.

Q. All right, sir.

A. And on the other hand, and to some greater extent the system originates traffic, and it receives it from connections, that is distributed to points on the Milwaukee and Northern lines. So that if both sides of the picture
1931 were shown I think it would be clear that the Milwaukee and Northern lines benefit to a greater extent than does the system line from traffic interchange between the two mortgage divisions.

Q. Just taking one year for illustrative purposes and not burdening the record with each year, could you give us an illustration for, say, 1935-1936 of the amounts of traffic contributed by the Milwaukee system towards the Milwaukee and Northern earnings?

A. I think we have it in our work papers here. The boys are getting it there.

Q. Just one year only, so that we will have the contrast in the record.

Well, if it is not readily available, I won't ask you to do that.

A. It is not readily available. We haven't here what we thought we had.

Q. Well, anyway, your general statement is, as I understand it, that the Milwaukee and Northern benefitted to a greater degree?

Mr. Rein: We object, your Honor. That is absolutely meaningless.

The Court: The objection is sustained.

1932 Mr. Oliver: I withdraw the question.

Q. I understood you also to attempt to explain in connection with these various revenue statements that no deduction had been made for improvements. Did you not make some such statement?

A. I did, for those years prior to 1937.

Q. 1937?

A. The 1933 and 1934 and the year 1936 and the 1935, which was a part of a petition. Neither of those statements included the amount of expenditures made for additions and betterments and which had been derived out of income because there had been no funding on the property and it was out of earnings.

Q. Do you recall whether those amounts were substantial?

A. No, I don't.

Mr. Oliver: That is all, thank you, sir.

The Court: I guess that is all, Mr. Severs. Would you want to ask some questions?

Mr. Moses: I wanted to ask a question first, of the Court.

The Court: Of whom?

Mr. Moses: Of the Court.

The Court: Of the Court?

1933 Mr. Moses: About this witness, yes.

My attention has just been called to what I understood was or what I was told was a ruling your Honor made, but I did not hear it at the time, that you did not consider as part of the record here the proceedings had before the District Judges here and petitions filed on behalf of the receivers.

The Court: I didn't say that.

Mr. Moses: Well, I wanted to make sure of it. I have referred in my brief to the testimony of Mr. Severs here before your Honor last December on an application for authority to pay interest on general mortgage bonds. And if that record be considered a part of the record here before the Court I am entirely content. If it be not considered part of the record I want to go into it.

The Court: Well, it is a part of the record.

Mr. Moses: Very well, sir. Then I may refer to it in argument?

The Court: Yes.

Now what is the rest of our program?

Mr. Rein: We have just some offer to get in. You remember we talked about something to read into the 1934 record?

The Court: Yes. You wanted to read something into the record. I believe that you can read that right to the stenographer there after we get through or if we take a recess.

Now, have we some more testimony?

Mr. Whitlock: We have the Gary bonds case.

Mr. Rein: I wanted to call your Honor's particular attention to one paragraph as illustrative of all the others.

The Court: What do you mean by that?

Mr. Rein: Well, we wanted to refer, make specific reference to a petition for order No. 39 on page 475 of the printed record, which was a petition filed in November, 1935, in which the president of the railroad made a statement in their petition as follows:

"As the Milwaukee & Northern lines are not only earning their full interest charges but also contributing a substantial sum to the system earnings, as set forth above, and as the management of Debtor Company, in obtaining assents to the aforesaid extensions, represented to holders of those bonds that those lines were earning their interest and 1935 for that reason were unlikely to be disturbed in any possible future reorganization of the Company, and as under the proposed Plan of Reorganization those bonds are to remain undisturbed as to lien and interest, it appears that payment of interest, as it hereafter falls due, upon said bonds, would be just and equitable and would in no way impair the rights of creditors or stockholders of Debtor."

Then, we want to refer to that petition and also to petition No. 100 appearing at page 1327 of the printed record, filed on May 16, 1936.

The Court: Well, there is no objection to that.

Mr. Rein: These are specific references so that your Honor will know what to turn to when he comes to that.

Petition for order No. 163, appearing on page 1931 of the record, filed on November 16, 1936.

Petition for order No. 308, appearing on page 3339 of the record, the printed record, filed on November 16, 1937.

Mr. Whitlock: The difficulty about that, your Honor, is that I don't see how we can ever tell what is in the 1936 record unless the stenographer gets it. He has just

read from certain orders there. It seems to me that the part that he wants put in the record should be put in the record in an offer.

Mr. Hoffman: I thought we had agreed that these petitions to which we refer should be considered as having been offered in evidence with the same force and effect as though we had taken physical copies of the petitions and put them into evidence.

The Court: They are going to read them into the stenographer's record as soon as we finish this testimony, or read a sufficient portion of each document so that you can find them without putting the whole document in the record.

Mr. Whitlock: I did not understand it that way.

The Court: That is the way I understood it.

Mr. Burgess: That is the way I understood it.

Mr. Whitlock: Well, the next is the Gary bonds.

1937 Thereupon, The Gary Group, to maintain the issues on its part, introduced the following evidence, to-wit:

Mr. R. H. McRoberts: Your Honor, I am appearing on behalf of the St. Louis Union Trust Company as trustee for the Chicago, Milwaukee, and Gary bonds, commonly referred to as the Gary bonds in this proceeding, and also on behalf of three bondholders who are joining in the objections filed by the trustee.

The holdings of the three bondholders, if I may state it into the record, following the procedure of the other parties, without offering formal proof to that effect, is as follows:

The Tower Grove Bank and Trust Company, $10,000 par value.

St. Louis Realty and Securities Company, $3,000 par value.

Loraine G. Franciscus, $10,000 par value.

I would like to call Mr. Cribben.

1938 C. E. CRIBBEN, called as a witness on behalf of the Gary Group, being first duly sworn, testified as follows:

Direct Examination by Mr. McRoberts.

Q. Will you state your name, please?
A. My name is C. E. Cribben.
Q. Where do you live, Mr. Cribben?
A. Chicago.
Q. And what is your business?
A. I am with the engineering staff of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.
Q. Have you, Mr. Cribben, at our request prepared a study of the salvage value of certain items of equipment, certain items of property subject to the lien of the Gary mortgage?
A. I have.
Q. And what property does that study cover?
A. It covers ties, rails, angle bars, frogs, switches, tie plates,—
Q. In summary, all metal equipment or all metal material?
A. Principally all items covered by the Chicago,
1939 Milwaukee and Gary First Mortgage.
Q. Does that include any real estate?
A. No.
Q. Or improvements? I mean real estate improvements, buildings and things of that sort?
A. It does include an item for some station buildings and roadway buildings.
Q. It does?
A. Yes.
Q. Those are only station buildings owned and operated by the Milwaukee as a part of its railroad line?
A. With one exception. A building at Rockford, which is leased.
Q. Which one is that, please? I don't want to—
A. It is known as the furniture warehouse at Rockford.
Q. Has your study been summarized in the form of an exhibit?
A. It has.
Q. What is the total estimated salvage value of all of the property which you have described?

A. The estimated net salvage value of the items set forth is $255,060.

Q. That is a net figure after deducting the cost of
1940 salvaging this property?

A. That is right. And also deducting the cost of transportation to the market considered.

Q. And the details of this estimate are shown in the sheet which you have prepared?

A. They are.

Q. And this is the exhibit which you just handed me?

A. That is right.

Mr. McRoberts: If your Honor please, I offer this in evidence as Gary Exhibit No. 33.

The Court: It may be admitted.

(The said document, so received in evidence by the Court, was marked GARY EXHIBIT NO. 33 and is in words and figures as follows, to-wit:)

1941 Mr. Burgess: No questions, your Honor.

The Court: All right, no questions.

Mr. McRoberts: I am through with this witness. But we have some other witnesses.

LOUIS B. BEARDSLEE, called as a witness on behalf of the Gary Group, having been first duly sworn, testified as follows:

Direct Examination by Mr. McRoberts.

Q. Will you state your name, please, sir?

A. Louis B. Beardslee.

Q. Where do you live, Mr. Beardslee?

A. I live at Barrington, Illinois, a suburb of Chicago.

Q. What is your business?

A. I am an industrial realtor, dealing in the management, brokerage and appraisal of industrial properties, specializing in properties having switch track or waterfront connections.

Q. Where is your place of business?

A. 100 North LaSalle Street, Chicago.

Q. You do business under the style of Louis B.
1942 Beardslee & Company?

A. Yes, sir, I do.

Q. And you are the—

A. I am the owner.

Q. —the owner of that or proprietor of that business?

A. Yes.

Q. Mr. Beardslee, how long have you engaged in this type of business?

A. I have been engaged in the industrial real estate business for 37 years.

Q. And in this vicinity?

A. In this vicinity, in Chicago and its metropolitan area pricipally.

Q. Mr. Beardslee, what experience have you had in the appraisal of real estate, particularly industrial and track property?

A. Well, I have appraised a very great deal of industrial property, principally, of course, in Chicago, but in various points of the country. The principal places in which I have appraised industrial property outside of the City of Chicago will be at points located at Sterling,
1943 Illinois, which is a short distance west of DeKalb, Illinois; the plant belonging to the American Locomotive Company at that place; properties for the Sanitary District of Chicago located in the city of Joliet, Illinois; factory property located on First Avenue in Elgin, Illinois; one or more properties in North Chicago, Illinois; property located in Waukegan, Illinois; property located in Mattison, Illinois; the large plant of the Cuneo Press on Erie Avenue in Philadelphia and the industrial property in Louisville, Kentucky. Those are all I can recall outside of Chicago, but of course in Chicago there have been several hundred plants and vacant properties that I have appraised at various times.

Q. Mr. Beardslee, are you a member of any appraisal boards or bodies?

A. I am a member, of course, of the Chicago Real Estate Board. I served that organization as treasurer and director, and chairman of its industrial property division for two terms and was a member for several terms of its valuation committee.

I am also a member of the National Association of
1944 Real Estate Boards, which is the national organization of real estate boards, having served it as director for several years, chairman of its industrial property division for four different terms; a member of the original executive committee of its appraisal division and in some

other capacities. Also as vice-president for one or two years.

I am also a member of the Industrial Real Estate Brokers Association of the New York Metropolitan Area, and I am a member of the American Institute of Real Estate Appraisers.

Q. Mr. Beardslee, have you been employed by the Debtor to make appraisal of real estate?

A. I have been employed by the—you mean the Chicago, Milwaukee, St. Paul and Pacific?

Q. Yes, the Chicago, Milwaukee, St. Paul and Pacific Railroad.

A. Several times, yes, sir.

Q. And other railroads?

A. And other railroads in Chicago, such as the North Western Railroad, the Chicago, Burlington & Quincy Railroad, oh, names that I can't recall. Of course, a great
1945 many times for the various banks and trust companies in Chicago, such as the First National Bank, the Harris Trust and Savings Bank, the Northern Trust Company, the Continental Illinois National Bank and Trust Company and some other banks and trust companies in different parts of the United States who had property here in Chicago.

I have also appraised property for the—

The Court: I think we will acknowledge he is an expert.

Mr. McRoberts: Q. Mr. Beardslee, I will ask you whether or not at our request you made an appraisal of the real estate and improvements of the—formerly the Chicago, Milwaukee and Gary Railway that is now subject to the lien of the Gary Mortgage?

A. I did.

Q. Did you form an opinion as to the fair market value of such property?

A. I did.

Q. Will you give me first, Mr. Beardslee, the total figure at which you arrived in your appraisal?

A. In my opinion the total figure of all the prop-
1946 erties that I appraised of the Chicago, Milwaukee and Gary Railroad amounted to $725,257.51.

Q. Now, that figure does not include any appraisal of the railroad as such; that is, of the line of railroad?

A. Not of the railroad itself; no, sir.

Q. It does include the right-of-way, the land underneath the railroad?

A. Yes, sir.

Q. And it does include the adjacent property?

A. Yes, sir. That is adjacent property belonging to the railroad.

Q. Belonging to the Gary line?

A. Yes, sir.

Q. And subject to the Gary mortgage?

A. Yes, sir.

Q. Now, Mr. Beardslee, have you included in your appraisal certain properties belonging to the Gary and subject to the Gary Mortgage but which have been leased by the Gary or by the Debtor or its predecessors?

A. I have; yes, sir.

Q. And which leased properties have had improvements placed upon them by the lessees?

1947 A. A great many of them. Not all.

Q. And you have included in this total figure of seven hundred and twenty-five thousand odd dollars the value of such improvements?

A. I have.

Q. Will you state the separate figure for such improvements, the aggregate amount of such improvements on leased properties?

A. The value of improvements on leased properties total is $127,492.50.

Q. Now, you are including those improvements in this total figure, are you?

A. Of the $725,000?

Q. Yes.

A. Yes, sir.

Q. You are not expressing any opinion, of course, on the legal proposition as to whether or not the lien of the mortgage attaches to such improvements made by lessees?

A. I have no such opinion.

Q. Mr. Beardslee, have you also included in your appraisals certain real estate which has been sold by the Debtor and its predecessors, which is subject to the

1948 lien of the Gary mortgage and for which releases have not been obtained, releases from the lien of the mortgage have not been obtained?

A. I have done so; yes, sir.

Q. Have you included in that figure the value of the improvements which have been made upon certain of those properties so sold without releases?

A. I have.

Q. What is the figure as to such improvements?

A. Just the improvements, Mr. McRoberts?

Q. Just the improvements, Mr. Beardslee.

A. The improvements on the land sold, to which you have just referred, amounts to $51,742.50.

Q. And you likewise express no opinion as to when that the lien of the mortgage covers such improvements?

A. I have no such opinion.

1949 Q. Mr. Beardslee, your figures are not broken down so that you can state separately the value of the right of way and the real estate which is used for railroad purposes, as distinguished from adjacent property and property that has been leased and sold?

A. No, sir.

Q. Can you give me the figure for the right of way, plus certain adjacent noncarrier property?

A. The value of all lands is $512,165.21.

Q. How much of that represents right of way and adjacent property, Mr. Beardslee?

A. Now let me see. How much of the value of right of ways and adjacent properties? That is what that means. That amounts to $512,165.21. That takes in all the lands subject to the mortgage.

Q. Let me rephrase my question. What I would like to have is a figure as to the value of right of way plus the adjacent property, exclusive property that has been sold or leased.

A. All right; as I said, I do not want to misunderstand your question, but as I understand it, what you want is the value of the right of way and adjacent properties leased to the railroad?

Q. No, what I would like you to do, if you can, and if you can't, tell me and I will pass that point, is 1950 to take out of that figure the property that has been leased and sold.

A. Oh, I cannot. That is included.

Q. You cannot give a separate figure?

A. No, sir.

Q. This figure which you have given is, in your opinion, a realizable figure?

A. In my opinion that is a figure that could be realized under ordinary conditions in a reasonable time.

Mr. McRoberts: That is all.

The Court: Any questions?

Cross-Examination by Mr. Clay.

Q. Mr. Beardslee, this right of way, was any search of the title made for details? Were you advised whether it was just an easement or whether the railroad owned the fee to the right of way?

A. My information that I gained on that came from the records of the Interstate Commerce Commission and the Chicago Milwaukee St. Paul and Pacific, and the understanding that I have and carefully going over the property and having the property pointed out to me that should be included in my appraisal. I did not make a study of the records in the county or the various counties to ascertain whether or not they were owned by the railroad, but
1951 I believe they are, and they looked to me to be.

Q. Well, the point is simply this: You are giving an abandonment value. Now, ordinarily a right of way is just a right of way over some farm, and whenever the railroad ceased to use the right of way for railroad purposes, ordinarily the property goes back to the owner of the farm.

A. Yes, I understand that, but I appraised that property as being owned by the railroad.

Q. You assumed it was all owned by the railroad?

A. Yes, sir.

Q. How much right of way is there?

A. Of the entire right of way?

Q. Yes.

A. I think I can give you that. I have it broken down here. Well, the right of way in Rockford—you want me to analyze these various areas in the various parts that I took into consideration?

Q. No, I don't want to take up that much time.

A. There is quite a few of them. I have not got it totalled; I have got it, for instance for Rockford.

Q. I will withdraw my question and try to state a few simple questions. The railroad right of way goes
1952 through quite a number of towns, doesn't it?

A. Yes, sir.

Q. It was built, was it not, as a proposed belt line to avoid the Metropolitan District of Chicago? It was built as a belt railroad, wasn't it?

A. I am not positive about that, but I assume that to be the case.

Q. Well, you would assume that it was proper to characterize it as a belt railroad from its location on the map, wouldn't you?

A. It would look to be, but I am not familiar with the reasons for its existence.

Q. You said the railroad goes through quite a number of towns.

A. Yes.

Q. The railroad goes along the streets of those towns, doesn't it?

A. No, I do not recall that the railroad was in any of the streets. As I recall it now I do not remember an occasion where the railroad occupied by easement, for instance, any street. If it had been, I would have paid particular attention to that fact.

Q. You did not testify you investigated whether the railroad had right of way over farms.

1953 A. No, sir.

Q. Similarly, you did not testify whether the railroad owned the fee or merely right of way within these city limits, did you?

A. I did not.

Q. Of the total right of way, would you hazard a guess as to what proportion was within corporate city limits and what proportion was in the country?

A. Well, it would be so purely a guess on my part that I would not want to hazard a guess on that. The property runs in a large square in the southeast portion of Rockford, Illinois, and then runs through many towns which are very small, very small communities. Outside of Joliet and Mommence and some of these others, and DeKalb and so on, but there are places like Manhattan, Andreas, Petone and several other small communities, where they are built up at the inter-junction of the railroad and the principal railroad, and the railroad runs straight through that town.

Q. Exactly, and you appraised the right of way in those towns at the value of adjacent city property?

A. Yes, sir.

Mr. Clay: That is all.

Mr. Meyer Abrams: May I ask a question?

The Court: Yes, sir.

1954 *Cross-Examination by Mr. Abrams.*

Q. Would these properties bring the value that you have testified to if they were sold at a foreclosure sale?

A. Well, I am not prepared to say, sir, what you can realize for property at a foreclosure sale. That is perhaps an unfortunate condition. I am appraising them at what I term their fair, cash market value, and I have taken into consideration what I believe those properties could be sold for in the open market in a reasonable time.

Q. As an expert, would you say that if the mortgagee was forced to go into foreclosure, would this property bring in the value that you have testified to?

A. It could be, particularly in the city of Rockford, and it could be in most parts of the line, in my opinion, meaning by that that the Chicago, Milwaukee and Gary Railroad, particularly in Rockford, is paralleled by one or more other railroads, all of which could serve the various properties that are now served by the Chicago, Milwaukee and Gary Railroad, which would retain to that property the same value that I put on it if the Chicago, Milwaukee and Gary Railroad were eliminated.

1955 Q. Having in mind after a foreclosure sale there would still be a redemption period of fifteen months, would you say at foreclosure sale this property would bring in the value you have testified to?

A. In fifteen months?

Q. Bearing in mind at foreclosure sale there would be a period of redemption of about fifteen months, would you say the property would bring in the values you testified to?

A. Well, I would say it would be my opinion that under any ordinary circumstances, these various properties could be sold in what you might term a reasonable time, whatever a reasonable time might justly be considered, I should say anywhere from one to five years. I believe that a great many of them could be sold to the present occupants of the property, and I think they occupy a position in the civic life of Rockford under which there would be a reasonable demand for properties for various uses similar to the uses to which they are now put.

The Court: Any further questions?

(Witness excused.)

1956 ROLAND C. BEHRENS, called as a witness on behalf of Gary Group, being first duly sworn, testified as follows:

Direct Examination by Mr. McRoebrts.

Q. State your name, please?
A. Roland C. Behrens.
Q. Where do you live, Mr. Behrens?
A. Richmond Heights, a suburb of St. Louis, Missouri.
Q. What is your business?
A. Vice President of the St. Louis Union Trust Company, St. Louis, Missouri.
Q. How long have you been with that company?
A. Twenty-three years.
Q. And in what capacity?
A. All my time has been in analytical work, in investment analysis from the very beginning. I am now the executive head of that department.
Q. Mr. Behrens, what experience have you had in analyzing securities, particularly railroad securities, to determine their value, both market and actual or intrinsic?
A. During the entire twenty-three year period the very function of our department is critical research and analysis of all securities which we either purchase or which
1957 come into our custody as trustee. During that time there has been at all times under such analysis securities of all types totalling anywheres from two hundred million to approximately a half a billion at the present time, and up to 1928 in that was included, of course, the more or less usual percentage of railroad securities.

At the present time we have about seventeen million dollars of railroad bonds under our supervision, and approximately, oh, about five million dollars of railroad stocks, and during my entire period, in addition to my twenty-three years of direct experience, I have had the benefit of five years of technical training in commerce and finance; also four years of law, being a member of the Missouri Bar since 1927.

The Court: Put the question you want to put to him, Mr. McRoberts.

Mr. McRoberts: Q. Mr. Behrens, I will ask you whether or not you have made an analysis of the modified plan of

reorganization approved by the Interstate Commerce Commission in the present proceedings.

A. I have.

Q. With particular reference to the preferred stock and no par value common stock provided under that plan.

1958

A. I have.

Q. Have you formed an opinion as to market value of such preferred and no par value common stock?

A. I have.

Q. Will you state what it is?

Mr. Clay: I object, your Honor.

The Court: What is your objection?

Mr. Clay: This plan provides that the mortgages, and charter provisions shall be worked out by the reorganization committee working under the supervision of the court; that only the barest terms or a summary of the terms is set forth in the plan. The value of these securities would depend on the terms of the mortgages and the terms of the charter, which are not known at the present time. Therefore it is impossible for anyone to say what the value is of these securities until the provisions are worked out.

Mr. Nicodemus: On behalf of the debtor, I want to know when the securities will be issued. It is utterly impossible for a man to appraise these securities when, and as issued.

Mr. McRoberts: I would like to ask a more specific question of the witness, if I may.

1959

The Court: That is a pretty broad question.

Mr. McRoberts: Your Honor, I passed by this preliminary question. I think this will clarify what I have in mind.

Q. Mr. Behrens, have you made an analysis of this stock with particular reference to the market price, the actual market price of the securities of this System which are to receive or for which these new securities will be issued?

A. Yes, it can be done very definitely by taking the price of certain issues of the St. Paul road that are now quoted on the New York Stock Exchange and then applying the treatment under the modified Interstate Commerce Commission Plan determine what the value is of the securities they will receive.

Q. Can you by examining the present market values of securities of this System determine what value the investing public is placing upon the proposed new securities?

A. I think I can.

Mr. Clay: I object, your Honor.

The Court: I think that is rather speculative, rather wholly speculative. How can he project into the future what the public will do with these securities when and 1960 after they are issued.

Mr. McRoberts: I did not intend to ask the question.

Mr. Clay: I don't think the witness intends to answer that question.

The Court: That is the way I understood your question.

Mr. McRoberts: Then I misstated the question.

The Court: Did you understand it that way?

The Witness: I understood it this way, just in a factual way, what value the investing public in the market is placing on securities based on this modified plan. In other words, if a man had, without mentioning any issues, a thousand dollar bond of a certain issue of the St. Paul Railroad Company. When that is listed he is placing a when, as and if value at which that bond may be exchanged.

Mr. Clay: May I interrupt?

The Witness: May I make this suggestion without mentioning the Gary situation: The adjustment bonds of the Milwaukee under this plan are exchangeable for ten shares of common stock of the new road, and the market for those adjustment Milwaukee bonds is 1½ today flat on the New York Stock Exchange or a value of the equivalent of $1.50 a share on the common stock. In other words, a man 1961 who will buy that bond today, that claim, will receive slightly less than ten shares of common stock under this plan, and the New York Stock Exchange value of that stock is 1½ or $15.00 per bond, providing $1.50 a share on the common stock.

The Court: That is a matter of arithmetic. You take the quotations of the New York Stock Exchange and put that on one side and put the new stock on the other side.

The Witness: In that particular instance.

The Court: $15.00 for the bond and $10.00 for the stock, each share of stock is worth $1.50. You don't need an expert for that figure.

Mr. McRoberts: If your Honor please, that is simply one element. This witness is taking into account and will express an opinion.

The Court: What other opinion do you want him to express?

Mr. McRoberts: Q. You mentioned the adjustment bonds, Mr. Behrens. Is the same thing true of the other system securities, the 50 year 5's and the general mortgage bonds?

A. It is true, but not quite to the same exact computation. Those bonds will get, I think it is three classes 1962 of securities.

Q. Will you take the general mortgage bonds, for illustration, and explain to the court.

A. Well, taking the general mortgage bonds, taking into consideration and trying to arrive at that value, it is a question of earning power, and I base that on actual earning power as reported, not attempting to project into the future. Comparisons of capital structures that have been actually reorganized, railroad companies, I think in this jurisdiction, where the relationship between fixed interest bearing bonds, contingent interest bonds, and so on, bears a very definite relationship to the amount of gross revenue, and taking the values of these securities which today have a definite market, under certain conditions are selling, and trying to project that into the exchange. I can illustrate that probably in this fasihon: That today the general mortgage series A bonds that I think have a total claim of approximately $1,117, and they receive twenty-five per cent in new first mortgage bonds, thirty-five per cent in general mortgage income series A, and twenty per cent in series B and twenty per cent preferred stock.

Now, by applying to that the actual dates of issuances of reorganization properties, the first mortgage bonds, 1963 seem to have some very definite indications of value.

One need not speculate on that. We can take the Chicago Great Western Railroad first mortgage bonds, the C. & E. I., and in the case of Missouri Pacific proceeding, while it is not completed, the Iron Mountain which could have new first mortgage, all pretty definitely sell for 60 cents on the dollar, so that on that basis we have something definite to work on. The income bonds of the roads I have just mentioned so generally, the first series, at around 20 cents on the dollar, in one instance lower, but assigning the value of 20 cents, giving them the benefit of the doubt, we are down to the question of what the income series B are worth. We have one or two instances now and they are worth 10 cents on the dollar. Projecting this forward and

using only 60 cents on the general income bonds, you run out of value before you reach your preferred stock. Needless to say the preferred stock will have some value. It will be a going concern, a solvent corporation. If that reduced income falls lower than we have reason to expect, apparently the best value you can reach for that preferred stock would be $4.00 a share. In other words, working it out this way, that these mortgage bonds that I have
1964 just referred to today are selling on the New York Stock Exchange at 5, or $250 for that claim, and using the new first mortgage bonds at 60, the income bonds series A at 15, although they should be worth 20, series B. bonds at 8, although they should be worth, in my opinion, about 10, that would leave you $4.00 a share on the preferred stock. That was one approach to determining the value.

We tried to use the question of income which has been available, taking in a period you choose during the trusteeship or a few years prior, or just taking the recent years, it was only—as a matter of fact in none of those years through 1939, using the Interstate Commerce Commission figures as approved by the Committee, there was no year in which there would have been any earnings, available for preferred stock, much less the common stock. If we use the Committee's estimate of a normal year, the earnings there would have been, as they show them, $3,300,000, without making the allowance for that additional two and or -half million dollars for the additions and betterments fu ds, so that even assuming that is true, you would have h d only a nominal earnings on the preferred stock.

1965 Those are the various elements of value that we have tried to take into consideration in formulating our opinion in the analysis of railroad securities, and what the preferred and common stock will do under the plan, having in mind similar situations in which we have an actual factual record.

Q. Now, Mr. Behrens, I will ask you what in your opinion is the actual value today, if issued today, of the preferred and common stock provided for in this plan of reorganization?

Mr. Clay: I object, your Honor. I would like to restate my objection, that from the explanation it appears that primarily it is based on Stock Exchange quotations. We have no objection to the Stock Exchange quotations being

put in for the various outstanding issues of securities of the Milwaukee road, but we do not think that this witness is qualified to value the new securities, basing his opinion primarily on—

The Court: What is the point you are driving at, Mr. McRoberts? Suppose this testimony went in. What is it?

Mr. McRoberts: The point I am driving at here, we have for scrap metal a value of $250,000. We have real estate that if it was abandoned, we can get some other figure, $725,-
000 possibly. The securities we are offered on this
1966 property on which we have a first lien, in our opinion,
is worth less than the scrap value of the metal material alone. We offer that to show that this plan cannot stand up so far as the Gary bonds are concerned.

The Court: Why not?

Mr. McRoberts: Because we are entitled to a first lien on property of greater value than they propose to give to us. I am laying aside for the moment the value for railroad purposes.

The Court: You mean you are entitled to a full 100 per cent value for your investment?

Mr. McRoberts: We contend on scrap value alone we are entitled to more than the Commission is giving us.

The Court: I understand what you are driving at. You want your bonds paid. I don't know that anybody is going to get their bonds paid.

Mr. McRoberts: There actually should be a measure of value for railroad purposes. Of course these witnesses are not testifying on that. We propose to argue what the record shows.

The Court: I am going to sustain the objection to this line of questions. I do not think it means anything in this
connection at all. Admitting the competency and the
1967 competency and ability of this witness, I don't think
it means anything so far as this investigation before the Court. You may make your offer, though, for the record.

Mr. McRoberts: If it is competent and if the witness is capable of expressing such an opinion, then that opinion for what it is worth should be admitted into this record.

The Court: You may make your offer and I will sustain objections to it, and you will have it.

Mr. McRoberts: I offer to prove by this witness, if permitted to answer, in his opinion the actual market value today on a when, as and if basis of the preferred stock pro-

posed to be issued under the modified plan of reorganization would be not in excess of $4.00 per share, and that the value of the common stock supposed to be issued under this plan of reorganization would be not in excess of $2.00 per share.

We also offer to prove by this same witness that in his opinion the actual or intrinsic value of that stock, fully apart from what it might bring on the market, would be no greater than the figures quoted for the respective mortgage values.

Mr. Clay: I object, your Honor, on the grounds already stated.

1968 The Court: Objection sustained.

(Witness excused.)

Mr. Whitlock: The next group is the miscellaneous group, I believe. The trustees have a small amount of testimony that will go to the correction we have suggested. We can put that in now, or the R. F. C. and leave ours to the last.

The Court: But there is more testimony going in.

Mr. Whitlock: Yes.

The Court: Then we might as well adjourn.

Mr. Clay: Your Honor, may I take a moment to ask leave to incorporate by reference the trustees' petition for leave to pay the Bedford Belt bonds, which appears at page 2977 of the printed record, the Court's findings of fact on that petition entered by Judge Wilkerson on June 28, 1938, conclusions of law on that petition entered the same day by Judge Wilkerson, the decree on the petition entered the same date by Judge Wilkerson, and the statement of findings of fact requested by the trustees and objected to by the group of Institutional Investors, signed by Judge Wilkerson on the same date.

Mr. Clay: I would like to incorporate into the record by reference the Interstate Commerce Commission

1969 report on investigation of the last reorganization of this road, which deals with the acquisition of the Chicago, Milwaukee and Gary. It appears at 131 I. C. C. 661, and following.

The Court: All right. We will recess until Monday at 10:00 o'clock.

Whereupon an adjournment was taken to Monday, September 9, 1940, at 10:00 o'clock A. M.

1970 (Caption—60463)

September 9, 1940,
10:00 o'clock A. M.

Court reconvened pursuant to adjournment.

Present: Same parties as before.

The Court: Let us ascertain as near as we can what else we have left here. I would like to also find out how much time you gentlemen will take. What is your estimate, Mr. Moses?

Mr. Moses: I do not think I shall take very long, your Honor. However, I cannot say how long the others will take. As to that I cannot answer.

Mr. Pantaleoni: Mr. FitzGibbon was not going to be here until Wednesday.

The Court: I understand. There are about thirty lawyers here.

Mr. Moses: Then I should think it would take two or three days, your Honor.

Mr. Whitlock: The evidence will be concluded in twenty minutes, your Honor, I think. I think we ought to be
1971 able to finish about Wednesday noon if we can get started today.

Mr. Moses: It is awfully easy to keep on talking when one once gets started.

(At this point there was a short interruption for the Court to consider other matters.)

The Court: Before we start this morning, I wish to state that the other day there was some discussion here and the Court made a ruling. The ruling was made in a rather heated manner that affected Mr. Sykes. Mr. Sykes, step up here a minute. I say that the other day we made a ruling in which you thought the Court was wrong. You explained to me what you had in mind and that what you had in mind was not what the Court understood. I am willing to accept your statement and whatever I said has been withdrawn from the record. I apologize for whatever I said.

Mr. Sykes: I was afraid the Court did not understand what I was trying to convey to him.

Mr. McSwain: If your Honor please, the Terre Haute

Bondholders' Committee moves to intervene. I have
1972 submitted a copy of the order to Mr. Whitlock.

The Court: Is that the same suggestion you made about these other orders?

Mr. Whitlock: If your Honor please, we will not object if they will agree that we will not have to serve them with everything they ask for, only notices applying to them.

The Court: Have you looked over this order?

Mr. Whitlock: I have looked over the draft.

The Court: Only notices will affect them.

Mr. Whitlock: That is right.

Mr. Weiss has asked for general intervention. He represents a certain group of bondholders. We object to it if it requires service of every notice of application upon him. I understand he will be satisfied with an order which provides it will not be necessary to serve him in advance with notice of proceedings to be had, but will be satisfied if we continue the present practice of giving him printed copies.

Mr. Weiss: Then I will present this order later.

The Court: Yes. Now, where are we?

Mr. Nicodemus: Mr. Whitlock has witnesses, I think.

1973 Mr. Whitlock: We have closed.

The Court: The objectors have closed, I understand.

Mr. Whitlock: Your Honor, the trustees have certain objections in the nature of formal objections and they go merely to the form of the plan.

The Court: Outside of this, have all the other objectors been heard?

Mr. Pantaleoni: If your Honor please, we have not put in all the evidence we intended to put in, but I would like to have the record show that our resting at that point is not a concession on our part that the record is sufficient because we would like to have the record show just what the record before the Interstate Commerce Commission also shows, that we have urged repeatedly that a thorough severance study should be made. With that qualification the fifty-year 5's rest.

Mr. Hoffman: Before the Milwaukee and Northern group rests, I would like to make, with your Honor's permission, a formal offer of proof in connection with the matter of the ore pooling arrangement concerning which I examined Mr. Severs on Friday.

1974 I offer to prove by the witness Severs, if he were permitted to answer, that no part of the revenues of the ore pooling arrangement between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and the Chicago & North Western Railroad Company are credited to the Milwaukee and Northern mortgage district. If your Honor wants the information I will be glad to give it.

The Court: You make that offer?

Mr. Hoffman: I make that offer, your Honor.

Mr. Burgess: I object.

The Court: The objection is sustained.

Mr. Whitlock: If we are to hear from no others, I will call Mr. Severs for the Trustee.

J. W. SEVERS, called as a witness on behalf of the Trustees, having been previously duly sworn, testified as follows:

Direct Examination by Mr. Whitlock.

Q. You have been heretofore sworn, have you, Mr. Severs?

A. Yes, I have.

1975 Q. Mr. Severs, do you have a copy of the objections filed in behalf of the Trustee?

A. I have.

Q. Calling your attention to the first one, which relates to the payments out of the reserve and retirement fund, I will ask you, Mr. Severs, if it is a fact that the Debtor has outstanding a number of equipment obligations other than equipment trust obligations?

A. The Debtor corporation and also the trustees of the property have a copy of such obligations.

Q. In what form are those obligations?

A. For the most part they are lease and purchase agreements and conditional sales contracts.

Q. What type of equipment in general do they cover?

A. Well, they cover stock cars in one case, and in the other case, except one, they cover Diesel switching locomotives.

Q. Practically all of the Diesels are covered by such equipment agreements, are they not?

A. That is true.

Q. Is the total amount of such obligations sub-
1976 stantial?

A. It is substantial. I should say it is in the neighborhood of around two million and a half. It is about two million and a half.

Q. Now, passing the objection No. 2, which relates to a provision as to the proposed new Terre Haute lease, I believe you testified when you were on the stand earlier that the Milwaukee pays annually the property taxes upon the Terre Haute property. Is that correct?

A. Yes, that is correct.

Q. That amount per year, I take it, is very greatly in excess of the sum of $12,000?

A. It is.

Q. I believe you said it exceeds a hundred thousand dollars per year?

A. Yes. It is in the neighborhood of between $150,000 and $175,000.

Q. Yes. Now, passing to objection No. 3, calling your attention to the part of the modified plan that is quoted and which appears at the bottom of page 7083 of the printed record herein, you note in that paragraph a
1977 suggestion of a possible change in accounting rules, Mr. Severs, do you?

A. Yes, sir.

Q. Will you state briefly what, if any, effect such a change might have upon the fund available for additions and betterments?

A. Well, under the present rules of the Interstate Commerce Commission, the accounting rules, property retired, that is existing property retired and replaced, the new structure added is charged to the investment account and the old structure retired is credited to the investment account and the ledger value of the original cost less salvage is charged to operating expenses.

Now, in case the Commission changes its rules so that the cost of replacing existing property is to be charged direct to operating expenses and there would be no change in the investment account, as it is stated in the language of the Commission, then the cash arising from property retirements, road property retirements, would not then be available for additions and betterments.

Q. And your additions and betterments fund would be correspondingly diminished?

1978 A. That is so.

Q. Now, I understand that the proposed correction is merely to provide in whatever language may be concluded to be appropriate that such change in rules would not reduce the amounts available under existing rules.

A. That is our intention.

Q. Passing to No. 4; you know, I take it, that the Trustees have entered into a great many contracts since they have been in charge of this property?

A. That is so.

Q. And for the purpose of limitation as to time we have fixed the period from June 29, 1935 as being the period since bankruptcy. Now, in those contracts it is a fact, is it not, that many of them contain provisions for specific termination?

A. Yes, sir.

Q. In some, a definite time is provided and in certain others, such time as the Court may allow. Is that not so?

A. That is so.

Q. Now, I understand the purpose of this particular correction is to carry over that life of termination to
1979 the new company pursuant to reorganization. Is that correct?

A. That is correct.

Q. Passing to No. 5; there are certain claims, are there not, Mr. Severs, mostly claims against and in favor of other carriers which have not been adjusted to date?

A. That is so.

Q. Reparation claims, for example?

A. Well, as a result of reparation claims; that is, the payment of reparation claims would result in an adjustment between carriers.

Q. And the settlement of claims as to divisions, there are a number of those not finally disposed of, is that not so?

A. That is so.

Q. What is the reason they have not been disposed of up to date?

A. Well, for the most part they result from disputes as to the proper division of revenues between certain carriers and they are ultimately adjusted and agreed upon which results in a settlement between the carriers involved.

1980 Q. Now, the class of claims in which those fall have been authorized to be paid by our order No. 1 in this proceeding, have they not?

A. That is so.

Q. And the purpose of the adjustment correction is to merely authorize the new company to continue the settlement of such claims as are not settled at the time the reorganization is closed, is that correct?

A. That is our intention.

Mr. Whitlock: I believe the other two raise only legal questions and that is all the evidence we have on the point, your Honor.

Mr. Smith: So that we will have your position in the record, Mr. Whitlock, have you stated whether or not it is your view that those matters you have called attention to may be corrected by the Court within the framework of the plan and the clarification of the plan?

Mr. Whitlock: I intend to state to the Court in my argument, which will be very brief, that it is not our contention that there is any necessity of sending the plan
1981 back to the Commission for making any such corrections as we propose, but that they are clearly within the power of the Court to correct as shown by subdivision Q of the supplemental plan as contained in the order.

The Court: And that is stated in the concluding paragraph.

Mr. Whitlock: That is stated in the opening paragraph of my brief.

The Court: In the concluding paragraph, isn't it?

Mr. Whitlock: Well, your Honor, in my brief it is the opening paragraph. Yes, it is also stated in the concluding paragraph. That is correct, your Honor; merely matters of correction.

The Court: Are there any questions of Mr. Severs?

(No response.)

Mr. Whitlock: That is all.

1982 The Court: Have you any testimony, Mr. Clay?

Mr. Clay: Your Honor, we will not have any. We are willing to stand on the record before the Commission.

The Court: What about Mr. Burgess and Mr. Smith; have you any testimony?

Whereupon, the Institutional Investors Group, to maintain the issues on their behalf, introduced the following evidence, to-wit:

Mr. Smith: Your Honor, we have one exhibit that we

desire to offer. We are in some doubt about whether we would offer it. But in view of the statement made by Mr. Pantaleoni a moment ago in reference to the position of the 50-year 5's, we have decided to offer the statement that has been prepared by the Debtor. Mr. Severs says he has only one copy here and he has sent over for other copies. I thought we might go ahead with this, by having it identified and handing it to Mr. Pantaleoni for the purpose of any questions he may care to ask. If that is satisfactory I will call Mr. Severs at this time.

1983 Mr. Pantaleoni: Necessarily I would have to examine that with what facilities I have here.

Mr. Smith: I think it is a statement you have seen, Mr. Pantaleoni.

Mr. Pantaleoni: I see.

Mr. Smith: Will you identify this as Institutional Exhibit 34?

(The exhibit was so marked.)

J. W. SEVERS, called as a witness on behalf of the Institutional Investors Group, having been previously duly sworn, testified as follows:

Direct Examination by Mr. Smith.

Q. Mr. Severs, I will hand you what has been identified as Institutional Exhibit 34 which is entitled "Segregation of System Income to Lines West, Pieces of Lines East, and Pledged Securities Upon Which First and Refunding Mortgage is a First Lien; Estimated Income Available for Interest, Net Capital Expenditures, and Remainder of Income Available for Interest on Mortgage

1984 Bonds After Deduction of Net Capital Expenditures, —July 1, 1935, to December 31, 1938," and ask you if that statement was prepared by you or under your direction?

A. It was prepared in part by myself and the remainder of the work was prepared under my direction.

Q. Are the facts and figures stated on that document true and correct to the best of your knowledge and belief?

A. They are.

Q. Do they bring down to a later date than did a similar study before the Interstate Commerce Commission

the results of the operations of the lines west of Mobridge upon which the 50-year mortgage has a second lien?

A. Yes. The statements extends the information two additional years and also supplies the last half of the year 1935. The year 1936,—the information for the year 1936 is before the Interstate Commerce Commission.

Q. Are you acquainted with the fact, Mr. Severs, that there is a dispute between the trustees respectively of the General Mortgage and the First and Refunding Mortgage as to which mortgage constitutes a first lien on cer-
1985 tain pieces of track that have been referred to as the 17 pieces east?

A. Well, I know there is a difference of opinion, Mr. Smith, as to what mortgage is a first lien on certain pieces, I believe it to be 17, but I don't know as to the parties.

Q. Yes. In this study, however, has any question which may exist as to that lien been resolved for the purpose of the study by assigning the income from those lines to the 50-year mortgage?

A. The income and income deficit from the operation of those so-called 17 pieces of lines east has been assigned to the mortgage division covered by the first lien, or, I mean, the First and Refunding Mortgage.

Q. Will you very briefly, please, state to the Court what that sheet shows in respect to the income or deficit of the lines west of Mobridge in the period covered by the statement?

A. The statement covers, your Honor, a period beginning with July 1, 1935, and ending December 31, 1938. It is separated first of all to show a segregation of earnings, that is, first of all, revenues, operating revenues, from which we have taken operating expenses, taxes, equip-
1986 ment rents, bringing it down to income available for interest.

Q. Mr. Severs, may I interrupt you? I think perhaps the detail of it may be brought out by other questions. If they are not, the detail appears on the sheet. My question, if you please, was simply if you would state to the Court what the final resulting figures are for the lines west.

A. The lines west separately from the other parts, I mean, the 17?

Q. No, I don't mean to exclude the 17 pieces east. I simply mean to call to the Court's attention the end result of that showing, as to what it shows.

A. Well, for the three-and-a-half-year period there was,

after deducting income that was withheld by the trustee of the First and Refunding Mortgage, there was a deficit after capital expenditures of $5,392,544.

Q. Was that deficit before interest or after interest?

A. That was a deficit before interest on any bonds which are a lien on the property. There have been some assignments of interest against the income.

1987 Q. Under what circumstances, if you please, was that exhibit prepared?

A. The exhibit was prepared at the request of one of the principal holders of 50-year mortgage bonds.

Q. And distributed to the parties in the case at that time?

A. Yes. We made quite a wide distribution of it. We gave copies to all of the parties that we had on our mailing list that were interested in mortgage segregations, including—

Q. That would include the committee for the 50-year 5's and the trustees for the 50-year 5's; would it not?

A. I am not sure about the committee for the 50-year 5's, but Mr. William Church Osborn, who was quite active in connection with the 50-year mortgage, made the request and copies went to him.

Q. What about the trustee of the mortgage?

A. The trustee or its counsel received a copy, I am sure.

Q. How long ago? When was that distributed?

A. Well, it was early in this year. The date is on the statement.

Mr. Smith: We offer this statement, if the Court

1988 please.

Mr. Pantaleoni: No objection.

Mr. Sykes: Have you copies, Mr. Smith?

Mr. Smith: They are on the way over. They will be distributed when they come.

The Court: It may be admitted.

(The said document, so received in evidence by the Court, was marked INSTITUTIONAL EXHIBIT 34, and is in words and figures as follows, to-wit:)

1989 *Cross-Examination by Mr. Pantaleoni.*

Q. Mr. Severs, you remember the analysis for the year 1936 which was placed before the Interstate Commerce Commission?

A. Yes, I do.

Q. I cannot remember, myself, the number of that exhibit, but was this exhibit that I now have here before me prepared upon the same principles and the same thories of allocation on which the exhibit before the Interstate Commerce Commission to which I have previously referred was prepared?

A. Well, substantially so, except that I shall say that the year 1937 in so far as the allocation of revenue is concerned was upon a more definite and accurate basis, because as you will remember in connection with the formula that we filed before the Commission we had determined or made an actual determination of revenues for four months, and then we had used the results of those four months as applied against the revenue as allocated to the various states of lines west; but as to 1937 and 1938 there is a greater refinement and we feel that there is a much better de-
1990 termination in that respect.

Q. By a greater refinement you mean for the calendar year 1937 an actual check was kept on all revenues for months similar to the one made in the 1936 one for the four months?

A. Yes; that is so.

Q. In other words, you did not have to for 1937 adjust your reports to states?

A. No, we did not.

Q. You had an actual allocation of revenues?

A. That is right.

Q. Were there any other changes that you recollect in principle?

A. No. There was no other change in principle.

Q. The treatment of equipment was on the same basis?

A Yes.

Q. The treatment of hauling of company materials and so forth was on the same basis?

A. Yes, that was on the same basis.

Q. Expenses generally were allocated on the same basis?

A. Yes. Of course, as far as most all of the expenses are concerned, that is a natural allocation that is kept.
1991 Q. I understand that.

A. Yes.

Q. But in fact there were no changes—

A. No, no changes.

Q. —in the principles of allocation?

A. No.

Mr. Pantaleoni: I might say for the record that I am

in somewhat of an embarrassing position because I understand that Mr. William Church Osborn secured this. I am Mr. William Church Osborn's counsel as well as the counsel for the committee of the 5's of seventy-five. The fact remains, however, that I have never seen this until just now. I wonder if the Court would accord me the privilege of perhaps, oh, fifteen minutes examination of this with the right to call Mr. Severs back subsequently? There may be other testimony, in which case it can be postponed.

The Court: Suppose you want to look at it during the noon recess? If you want to question him about it afterwards, you may do so.

Mr. Pantaleoni: Thank you.

The Court: Is that all the questions you want to ask him?

1992 Mr. Pantaleoni: Yes.

Mr. Moses: May I ask Mr. Severs a question, if your Honor please?

The Court: Yes.

Cross-Examination by Mr. Moses.

Q. On this statement, do I read it correctly as showing operating income on the pieces of the lines east for this period amounting to six hundred ninety-one thousand odd dollars?

A. I haven't the statement in front of me.

Q. Well, here it is. Is that the correct statement?

A. Yes. The pieces of lines east? That is right. $691,000 plus.

Q. That $691,000 plus is credited to the lines west in determining the amount of their operating deficit for the period; isn't that so?

A. That is so.

Q. So that if the Court should decide that the General Mortgage is the first lien on the pieces of lines east and that income should be credited to the General Mortgage lines rather than to the lines west the deficit, the

1993 operating deficit of the lines west for that period would be increased by $691,000 and would amount to $6,000,000; isn't that so?

A. Yes, sir.

Mr. Moses: That is all.

Cross-Examination by Mr. Sykes.

Q. Mr. Severs, I take it from this exhibit that it is quite a feasible thing to maintain an accurate record of the earnings contributed by the different branches of the system; is it not?

A. Yes. In our studies we have analyzed the sources of the traffic. In some cases we can tell the amount of revennes that have been contributed by the various lines one to the other.

Mr. Sykes: That is all.

Mr. Oliver: If your Honor please, the Mutual Savings Bank Group stands on the record made before the Commission and has no additional testimony to offer here.

The Court: Does that conclude the testimony, Mr. Whitlock?

Mr. Whitlock: As far as I understand.

The Court: Everybody has been heard then
1994 except it might be possible that you want to ask Mr. Severs some questions at 2:00 o'clock?

Mr. Pantaleoni: Yes.

The Court: Then what is the next matter we approach?

Mr. Whitlock: The argument will be the next thing in order, your Honor.

The Court: Then I think it would be conducive to orderly procedure to take a recess until 2:00 o'clock. Between that time you can agree upon the order in which these men want to speak. Who will take charge of that? Mr. Nicodemus, you, for your side?

Mr. Nicodemus: All right.

The Court: Suppose we do that. You can agree on your speaking program and what time you want and we will adjourn to 2:00 o'clock.

Mr. Ballard: If your Honor please, would you be good enough to let us know whether the objectors are entitled to open and close? We would like to do that.

The Court: I think they should.

Mr. Ballard: Thank you.

The Court: You have no objection to that, have
1995 you?

Mr. Burgess: No.

The Court: It is your objection and you are trying to sustain it. I think you ought to have the right to open and close. And you folks are going to agree here among yourselves. You can agree on that.

Mr. Hoffman: Does that mean that each objector opens and closes?

The Court: No, the side.

Mr. Hoffman: They have sides as between themselves, you see.

The Court: Well, you folks can agree on that.

Mr. Osborn: Your Honor, would you indicate a time limit?

Mr. Nicodemus: Have you any suggestion as to that?

The Court: What do you folks say as to what time should be allowed on one side and then on the other?

Mr. Moses: I think it would be very hard in advance to do that. I think if anybody talked too long your Honor might suggest to him that you have heard that before or something of that kind and we will just try not to take longer than is necessary.

The Court: I don't see how you can very well not
1996 watch your time limits now. I don't want to cut off anybody. Anybody who wants to be heard is entitled to be heard. You just work out the order. We will all live through it.

(Whereupon, the further hearing of this cause was adjourned until 2:00 o'clock P. M., September 9, 1940.)

1997 Endorsed: Filed Jan. 21, 1941. Hoyt King, Clerk.

1999 • • (Caption—60463) • •

September 9, 1940,
2:00 o'clock P. M.

Court reconvened pursuant to adjournment.

Present: Same parties as before.

The Court: You may proceed.

Mr. Whitlock: I have just placed on your desk, your Honor, a copy of the order of procedure which seems to be satisfactory to every one. As to the numbers 3 and 4, the adjustments and the fifty-year 5's, I understand a representative of each one of those two groups has asked your Honor to permit argument perhaps on Wednesday, or Tuesday.

The Court: Wednesday, I think, Mr. FitzGibbon asked to come back, and there is another gentleman here, what is his name?

Mr. Whitlock: Mr. Freund?

The Court: Yes, Mr. Freund.

Mr. Whitlock: Well, Mr. Freund represents the 2000 adjustments.

The Court: Well, he expects to be back here Tuesday or Wednesday.

Mr. Whitlock: Well, we thought then their arguments might be continued until they arrived, if they are not here at the time the arguments are called for.

The Court: Well, supposing we start off according to this program. Mr. Nicodemus is first.

Mr. Pantaleoni: I thought I was to ask some additional questions of Mr. Severs.

The Court: Oh, I beg your pardon. Where is Mr. Severs?

Mr. Pantaleoni: I am sorry. I will take just as little time as I can.

J. W. SEVERS, resumed the stand for further examination and testified as follows:

Cross-Examination by Mr. Pantaleoni.

Q. Mr. Severs, I show you Institutional Investors' Exhibit 34, which was the exhibit put into evidence just before the recess. I ask you if that exhibit gives any effect to the earnings of the Terre Haute?

2001 A. No, sir, it does not.

Q. I show you a chart which is headed, "Segregation of System Income to Terre Haute Lines on a Cost of Service Basis" and I ask you if that is a chart which has already been placed in evidence?

A. No, this chart has not been placed in evidence before this Court exactly in the way that it has been shown on this statement.

Q. Was this a chart that was prepared by you at the same time that you prepared the chart which is marked Institutional Investors' Exhibit 34?

A. That is right.

Q. And that shows the earnings of the Terre Haute on a cost of service basis?

A. That is right.

Mr. Pantaleoni: I offer that in evidence.

The Court: That was offered this morning, wasn't it?

Mr. Pantaleoni: No, there were three sheets. Only one of them was offered this morning.

The Court: This is Exhibit 35. Do you object to it, any of you gentlemen?

Mr. Smith: We have no objection.

Mr. Ballard: May I look at the one in reference 2002 to the Terre Haute before it is received?

Mr. Pantaleoni: This exhibit will be fifty-year 5's, Exhibit 35.

Are there any objections?

The Court: I understand there are no objections. If not, it may be received in evidence.

(Whereupon the said document so received in evidence by the Court, was marked FIFTY-YEAR 5's EXHIBIT 35, and is in words and figures as follows, to-wit:)

2003 Mr. Pantaleoni: Q. Did you, Mr. Severs, also prepare at the same time a study which gave effect to the earnings or deficits of the lines west, pieces of lines east, Terre Haute, and securities pledged under the first and refunding, and capital expenditures and interest charges on the first and refunding, so that the sum total would represent the net result of all properties subject to the lien of the 5's of 1975?

Mr. Moses: Just a minute. I object to the form of the question, which assumes that these pieces of lines east are subject to the first lien of the first and refunding, and the fifty-year 5's. That is a question which was raised before the Interstate Commerce Commission and which it expressly declined to pass upon as a question of law and left it for this Court to pass upon. This question assumes that these pieces of lines east are subject to a first lien on the first adjustments and a second lien on the fifty-year 5's, and we claim that they are subject to a lien of the general mortgage.

Mr. Pantaleoni: No, no, I did not mean to foreclose that question by the way I framed my question, and I will modify it simply to say that it includes, among 2004 other things, the income from the pieces of lines east, as to which there is a dispute as to whether that comes within the lien of the general mortgage or the 5's of 1975. Does that satisfy you?

Mr. Moses: Yes.

The Witness: I have prepared a statement which shows the estimated income available for interest, capital ex-

penditures, and payments in redemption of funded debt, and remainder of income available for interest on mortgage bonds after deduction of bond interest paid, net capital expenditures, payments in reduction of funded debt and dividends and interest on pledged securities withheld from railroad trustees for the period July 1, 1935 to December 31, 1938. That statement purports to include the income or deficit available from property alleged to be subject to the first and refunding mortgage, including income from pledged securities in the first and refunding mortgage.

Mr. Pantaleoni: Q. Correct.

Now, I offer that as Exhibit 36, your Honor, of the 5's of '75.

2005 The Court: It may be received in evidence.

(Whereupon the said document so received in evidence by the Court, was marked 5's of '75, EXHIBIT 36, and is in words and figures as follows, to-wit:)

2006 Mr. Pantaleoni: Q. Now, Mr. Severs, referring to Institutional Investors' Exhibit 34, line No. 32: that, I take it, represents the deficits in operation of the lines west exclusive of pieces of lines east and any other questions of the collateral pledged for the 5's of '75, is that right?

A. That is right.

Mr. Sykes: On which exhibit is that?

Mr. Pantaleoni: That is Exhibit 34. That is the first one introduced this morning.

Mr. Sykes: I see.

Mr. Pantaleoni: Q. And going on down the lines to line 51; you take in and add the income from pieces of lines east with a footnote stating that there is a dispute as to the question of whether this is a proper amount to be included.

A. That is right.

Q. Now, look at Exhibit 36, line 2. I take it that the amounts appearing in line 2 are the amounts that appear in line 53 of Exhibit 34. is that not right?

A. That is right. We have carried forward to the recapitulation, which is Exhibit 36, income available

2007 for interest on lines west, pieces of lines east, and pledged securities.

Q. Looking again at Exhibit 36, the next line, that is line 3, takes in the income of the Terre Haute and applies it against that line 2, applies it against the deficit in lines west and pieces of lines east, is that right?

A. Well, substantially so. What the line 3 represents is the portion of income to the Milwaukee from the operation of the Terre Haute. It is not applied against but it is used in developing the total income available for interest for the first and refunding mortgage.

Q. I understand that. Your next lines on Exhibit 36, lines 5 to 11, inclusive. Those, I take it, constitute an allocation of interest charges on the loan of the Reconstruction Finance Corporation, is that right?

A. Lines 6, 7, and 8 allocate the portion of interest paid on the R. F. C. and the P. W. A. loans that are assignable to lines west.

Q. How was that allocation made?

A. On the basis of the use to which the money

2008 was put.

Q. That is the proceeds of the loans—

A. The proceeds of the loans as they were applied either to the payment of interest or purchase of materials and supplies, were actually applied on the respective lines.

Q. I see. And line 9 and line 10, aren't they allocated on the same basis?

A. Line 1, yes, but as to line 10, that is interest on—

Q. Equipment Trust "E"?

A. Equipment Trust "E", the equipment which has been assigned to the Terre Haute to fill vacancies.

Q. All the interest on that was charged.

A. That is right.

Q. Now, Item No. 12 applies to rent due by the system for the use of the Terre Haute, is that right?

A. Yes. Line 12 represents the rent for the Terre Haute.

Q. Now, after you have applied all of those items, looking now at line 19 of Exhibit 36, you come out with a credit for the 5's of '75 in the amount of $17,817 for the six months of 1935, do you?

2009 A. Yes.

Q. And $186,007 for the year 1936.

A. That is correct.

Q. Then there is a deficit of $168,096 for 1937?

A. Correct.

Q. There is a deficit of $1,054,724 for 1938?

A. That's right.

Q. Now, the next series of adjustments on lines 20 to 29: I wish you would explain those, if you will?

A. All right. Lines 20 to 23, inclusive, represent cash

expenditures for improvements to the property as shown in line 21.

Line 22 represents principal payments on Equipment Trust "E".

Q. That was the equipment trust that was assigned to the Terre Haute?

A. That is right. Line 23 shows the total capital expenditures and payments in reduction of funded debt which in the 3½ year period amounted to $5,020,998.

Q. What funded debt was that?

A. The funded debt was Equipment Trust "E".

Q. Equipment Trust.

A. Yes.

2010 Q. The Equipment Trust on equipment used on lines west?

A. Well, sir, the equipment might have been used on lines west or in any other parts of the system and probably foreign lines as well.

Q. Why did you charge that against the income allocable to the 5's of '75?

A. For the reason we are crediting them with any earnings on the Terre Haute. The Terre Haute should support its own equipment. In other words, if the Terre Haute equipment was on the Milwaukee system or a foreign line they were credited on the basis of a per diem rate.

Q. Those were refundings of equipment that should have been owned by the Terre Haute? I think I am confused about that.

A. Well, it does belong to the Terre Haute.

Q. Was there not testimony here the other day that there was a default in the Terre Haute equipment?

A. Yes, that is so, but this does not mean that all of the Terre Haute equipment has been replaced. This is a certain part of the equipment that was acquired I believe

2011 in 1928 to fill vacancies under the Terre Haute mortgages.

Q. Oh, I see, but, this was equipment that was acquired for the Terre Haute?

A. Exactly so.

Q. And they got credit for the use of this equipment?

A. Yes.

Q. And when they loaned it to other parts of the system they charged the other parts of the system?

A. That is right.

Q. I see. Now, after applying all those items we come down to line 31 and you get a final picture, always assuming, I suppose, that pieces of lines east are properly allotted to the 5's of '75, of a deficit of $64,998 for the six months' period in 1935?

A. That is correct.

Q. There is a credit of $296,440 for 1936?

A. That is correct.

Q. And there is a deficit of $23,323 for 1937. Is that correct?

A. Correct.

2012 Q. And then there is this large deficit of $1,599,460 for 1938.

A. That is right.

Q. This morning on direct examination you were asked, looking at Exhibit 34, to give the net results of that exhibit in one set of figures. Can you point out the set of figures that you gave?

A. Well, I recall that there was a question asked of me if the earnings or the net deficit available for mortgage bonds for the 3½ year period was $5,392,544 and I answered that was right.

Q. All right. And you took that from line 79 of Exhibit 34?

A. That is right.

Q. That figure, as I understand it, excluded the results on the Terre Haute?

A. That is correct.

Q. And it excluded on the other side the allocation of interest on the first and refunding, is that correct?

A. I do not believe I understand the question.

Q. Well, in determining that figure of $5,392,544, there was no allocation of the interest on the first and re-
2013 funding bonds. I call your attention to Exhibit 34 to refresh your recollection, Items 54 to 61.

A. Well, I understand what you mean but your question is not quite right, it is not framed quite right.

Q. I wish you would reframe it.

A. I believe you intend to ask me if there has been credited there any part of the interest on the R. F. C. loans and the P. W. A. loans, and other miscellaneous items against the first and refunding bonds, and my answer is no.

Q. I see. Now, that figure of $5,392,544, if corrected as you have corrected it in Exhibit 36, becomes $1,391,341.

Mr. Moses: I object to the form of that question because it assumes this is a correction and not a modification. We do not concede that all these things which have appeared on this last exhibit are properly creditable to the adjustments and the fifty-year 5's.

Mr. Pantaleoni: I withdraw the question and reframe it so that instead of using the word "corrected" I use
2014 the words "amended to include other items".

A. That is right.

Q. Then the answer is "Yes"?

A. That is right.

Q. Now, I asked you earlier today as to whether there were any other changes in the method of preparing the statistics shown on Exhibit 34 for the years 1937, 1938, and 1935, as compared with the methods used in arriving at the statistics as shown on the same exhibit for the year 1936, and you have described to me one difference which I find is set forth in footnote 3 of Exhibit 34. Is that correct?

A. That is correct.

Q. Now, I think you also stated that there were no other differences except the one footnoted in Exhibit 34.

A. I said we do not change the basis for allocation.

Q. Well, I was not trying to catch you. By not changing the basis, do you mean there were some other types of changes that you have made?

A. No, I have no intention to say that we made any changes. When I say a basis of allocation I mean a formula through which we arrived at those figures.

2015 Q. Look at Exhibit 34, note 4. That is footnote No. 4. I take it that in footnote No. 4 that is a breakdown of contribution showing traffic contributed by lines west to lines east, and vice versa.

A. Well, we had no intention of developing contributions. What this is is an analysis of the sources of the traffic.

Q. In other words, that would not include all the contributions of one system to the other?

A. Oh yes, it would show the sources of the traffic originating and terminating.

Q. Do you show the sources of traffic originating and terminating?

A. That is right.

Q. Now, in order to get the total of interchanged traffic between the two systems, looking at the 1935 figures, you

would add for eastbound $2,176,213 to $3,813,348, which would give you the total eastbound traffic between the two systems, would it?

A. I did not check the figures you have read.

Q. $2,176,213 plus $3,813,348.

A. That is right.

Q. Yes, that is right. And you would get the total westbound traffic by adding $876,238 to $1,137,722.

2016 A. Yes.

Q. And you would get the total interchanged traffic by adding all four of those items together?

A. That is right.

Mr. Pantaleoni: That is all.

Cross-Examination by Mr. Moses.

Q. Mr. Severs, in this last exhibit, No. 36, your Item 3 is a proportion of income to Milwaukee from operation of Terre Haute. What is the significance of the word "proportion", there? Does that mean 97 per cent, the proportion that the Milwaukee owns of the Terre Haute stock?

A. It does not mean that. In so far as the use of the word "proportion" is concerned, it means the income to the Milwaukee arising from the operations of the Terre Haute on the basis of cost for handling company material.

Q. Yes. And in this Exhibit 36 you are crediting as applicable to the interest on this first and refunding mortgage the entire estimated profit which the Milwaukee has made from the operation of the Terre Haute during this period. Is that correct?

2017 A. Well, it has the effect of that.

Q. Yes. That is the effect of these figures.

A. That is the effect of the figures, yes, sir.

Q. Is that using standard railroad rates or cost of operation?

A. It is on the basis of the cost for handling Milwaukee Company materials including coal. I might say that if you will refer to Exhibit 35 you will notice that after adjusting the revenues and expenses to a cost of service basis, that is brought forward to Exhibit 36, that amount that is shown on line 3.

Q. Is that based on any arbitrary price per ton in determining this cost of operation?

A. No, sir, it is not. It is based on the cost of handling the traffic as exhibited on the statement. We have introduced that statement here in detail.

Q. You deduct that cost from the standard freight rates, is that right?

A. Well, what we do, we remove the so-called standard rate, if you want to call it that, this tariff rate, and then we add back the cost of handling the traffic on the basis of cost to us.

Q. So the difference between what it cost the Mil-
218 waukee to handle this coal and what it would have paid if it were paying the tariff rates on that is the difference, is that correct?

A. No, that is not correct. As I say, we remove from the revenue the amount determined on the basis of tariff rates.

Q. Yes.

A. And then we add back as an expense item the cost of handling the traffic.

Q. Yes. Then isn't the result the difference between the two?

A. No, it is not.

Q. Well, I give it up.

Cross-Examination by Mr. Pantaleoni.

Q. What you mean by cost of service basis is, if you start by computing your revenues on a tariff basis, having started that way, your next step would be to strike out from the revenues all revenues from company coal and substitute therefor revenues which exactly equal the cost to the Terre Haute of hauling that coal?

A. Well, the question explains what we do except
2019 we do not add back to the revenue, as revenue, the out-of-pocket cost of handling the traffic. We merely use that for a deduction.

Q. A deduction.

A. Yes. It has the same effect, though.

Q. All right.

The Court: Are there any other questions?

(No response.)

The Court: That is all, Mr. Severs.

711 And afterwards, to wit, on the 9th day of September, A. D. 1940, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit: Entered Sept. 9, 1940.

712 Order No. 708.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER.

This cause coming on to be heard upon the petition of Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bondholders' Committee for leave to intervene in this cause, and it appearing to the Court a copy of said petition for leave to intervene has been served upon all attorneys of record, and the Court being fully advised in the premises;

It Is Ordered that Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bondholders' Committee be and the same is permitted to intervene in this proceeding and constituted as a party in this proceeding entitled to be heard respecting any matters affecting that certain lease of the properties of the Chicago, Terre Haute and Southeastern Railway Company dated July 1, 1921, or that certain guaranty by the Debtor of the Terre Haute Income Mortgage Bonds.

It Is Further Ordered that notices of all motions and proceedings hereafter filed herein, which said motions or proceedings affect the Terre Haute lease or the Debtor's guaranty of the Terre Haute Income Mortgage Bonds shall be served upon its attorneys, Messrs. William A. McSwain and West & Eckhart, 38 South Dearborn St., Chicago, Illinois.

Enter:

Igoe,
District Judge.

Dated: September 9, 1940.

Filed Sept. 12, 1940.

720 And on, to wit, the 12th day of September, A. D. 1940 came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Petition in words and figures following, to wit:

721 Petition for Order No. 710.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

PETITION OF TRUSTEES WITH REFERENCE TO ALLOWANCE FOR CERTAIN PURPOSES OF CERTAIN CLAIMS.

Come Now Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of the Debtor herein, and respectfully represent:

1. By an order of this Court, entered in this proceeding on July 6, 1935, the creditors and stockholders of the Debtor were divided into classes according to the nature of their respective claims and interests and provision was made as to the manner in which claims and interests of creditors and stockholders of the Debtor should be filed or evidenced. Said order provided that the aggregate claims of the holders of mortgage bonds issued, assumed or guaranteed by the Debtor or constituting a lien upon the property of the Debtor and equipment obligations guaranteed by the Debtor or constituting a lien upon property leased to the Debtor should be evidenced as to each class of such bonds and each series of such equipment obligations by the filing with the Clerk of Court of a verified statement of the Corporate Trustee under the indenture or agreement securing such bonds or equipment obligations showing the principal amount outstanding as shown by the records of such corporate trustee. Provision was also made for evidencing the interests of the holders of preferred stock and common stock of the Debtor and for the evidencing of all other claims or interests.

2. Pursuant to said order of July 6, 1935, various claims and interests were evidenced in the manner prescribed by said order. Among others, verified statements as to the following bonds were filed by the Trustee or Trustees indi-

cated, the outstanding amounts shown being those set forth in said statements:

Milwaukee & Northern Railroad Company
First Mortgage 4½% Bonds under Indenture dated June 10, 1880.
City Bank Farmers Trust Company, Corporate Trustee.
Verified Statement filed July 27, 1935.
Principal Amount outstanding, $2,155,000.

Milwaukee & Northern Railroad Company
Consolidated Mortgage 4½% Bonds under Indenture dated February 11, 1884.
City Bank Farmers Trust Company, Corporate Trustee.
Verified Statement filed July 27, 1935.
Principal Amount outstanding, $5,092,000.

Chicago, Milwaukee and Gary Railway Company
First Mortgage 5% Forty-Year Bonds under Deed of Trust dated April 1, 1908.
Illinois State Trust Company and St. Louis Union Trust Company, Corporate Trustees.
Verified Statement of Illinois State Trust Company and of St. Louis Union Trust Company filed September 9, 1935.
722 Separate Statement and Claim by St. Louis Union Trust Company filed August 30, 1935.
Principal Amount outstanding, $5,700,000.

Chicago, Milwaukee & St. Paul Railway Company
General Mortgage Bonds under Indenture dated May 1, 1889.
The United States Trust Company of New York, Corporate Trustee.
Verified Statement filed July 25, 1935.
Principal Amount outstanding, $150,000,000.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Fifty-Year 5% Mortgage Bonds under Mortgage and Deed of Trust dated as of February 2, 1925.
Guaranty Trust Company of New York, Corporate Trustee.
Verified Statement filed September 30, 1935.
Principal Amount outstanding, $106,395,096.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company,

5% Convertible Adjustment Mortgage Bonds under Adjustment Mortgage dated as of February 2, 1925.
The National City Bank of New York, Corporate Trustee.
Verified Statement filed August 22, 1935.
Principal Amount outstanding, $182,873,693.

and verified statements as to the following equipment obligations were filed by the Corporate Trustees indicated, the outstanding amounts shown being those set forth in said statements:

St. Paul Railway Equipment Trust, Series A.
Manufacturers Trust Company, Corporate Trustee.
Verified Statement filed August 9, 1935.
Principal Amount outstanding, $1,617,000.

Chicago, Milwaukee and St. Paul Railway Equipment Trust, Series C.
The Pennsylvania Company for Insurances on Lives and Granting Annuities, Corporate Trustee.
Verified Statement filed August 30, 1935.
Principal Amount outstanding, $3,600,000.

Chicago, Milwaukee and St. Paul Railway Equipment Trust, Series D.
The Pennsylvania Company for Insurances on Lives and Granting Annuities, Corporate Trustee.
Verified Statement filed August 30, 1935.
Principal Amount outstanding, $3,708,000.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust, Series E.
The Pennsylvania Company for Insurances on Lives and Granting Annuities, Corporate Trustee.
Verified Statement filed August 30, 1935.
Principal Amount outstanding, $1,521,000.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust, Series F.
The Pennsylvania Company for Insurance on Lives and Granting Annuities, Corporate Trustee.
Verified Statement filed August 30, 1935.
Principal Amount outstanding, $2,952,000.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust, Series G.
The Pennsylvania Company for Insurances on Lives and Granting Annuities, Corporate Trustee.
Verified Statement filed August 30, 1935.
Principal Amount outstanding, $469,000.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust, Series H.
The Pennsylvania Company for Insurances on Lives and Granting Annuities, Corporate Trustee
Verified Statement filed August 30, 1935.
Principal Amount outstanding, $315,000.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust, Series J.
The Pennsylvania Company for Insurances on Lives and Granting Annuities, Corporate Trustee.
Verified Statement filed August 30, 1935.
Principal Amount outstanding, $5,583,000.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust, Series K.
The Pennsylvania Company for Insurances on Lives And Granting Annuities, Corporate Trustee.
Verified Statement filed August 30, 1935.
Principal Amount outstanding, $1,410,000.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust, Series L.
The Pennsylvania Company for Insurances on Lives and Granting Annuities, Corporate Trustee.
723 Verified Statement filed August 30, 1935.
Principal Amount outstanding, $2,840,000.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust, Series M.
Chemical Bank & Trust Company, Corporate Trustee.
Verified Statement filed September 3, 1935.
Principal Amount outstanding, $1,537,000.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust, Series N.
Chemical Bank & Trust Company, Corporate Trustee.
Verified Statement filed September 3, 1935.
Principal Amount outstanding, $120,000.

Claims were also filed by Reconstruction Finance Corporation in the principal amount of $11,499,462.50, evidenced by certain Notes and secured by certain pledged collateral described in said claim, and by Federal Emergency Administrator of Public Works in the principal amount of $2,291,000, likewise secured by pledged collateral described in said claim, which claim was later assigned to Reconstruction Finance Corporation.

3. Of said Milwaukee & Northern Railroad Company First Mortgage 4½% Bonds, $2,111,000, principal amount, were extended to mature June 1, 1939, and are outstanding in the hands of the public; $44,000, principal amount, matured June 1, 1934, were not extended and of this amount $6,000, principal amount, are in the hands of the public and $38,000, principal amount, are pledged under Debtor's First and Refunding Mortgage.

Of said Milwaukee & Northern Railroad Company Consolidated Mortgage 4½% Bonds, $5,047,000, principal amount, outstanding in the hands of the public, were extended to mature June 1, 1939. The remaining $45,000, principal amount, were not extended and of this amount $25,000, principal amount, are in the hands of the public and $20,000, principal amount, are pledged under Debtor's First and Refunding Mortgage.

Of said Chicago, Milwaukee and Gary Railway Company First Mortgage 5% Bonds, $3,000,000, principal amount, are outstanding in the hands of the public and $2,700,000, principal amount, are pledged under Debtor's First and Refunding Mortgage.

Of said Chicago, Milwaukee & St. Paul Railway Company General Mortgage Bonds, $138,788,000, principal amount, are outstanding in the hands of the public and the remainder, amounting in principal amount to $11,212,000, being the Series "G" Bonds, are pledged as security with Reconstruction Finance Corporation for loans of the Debtor.

4. Payments have since been made from time to time upon the Equipment Trust Certificates listed above and the principal amounts outstanding as of August 1, 1940, after deducting payments so made, are as follows:

Series "A"	$ 107,800
Series "C"	562,800
Series "D"	1,867,800
Series "E"	846,200
Series "F"	1,640,000
Series "G"	202,000
Series "H"	135,600
Series "J"	3,357,400
Series "K"	987,000
Series "L"	1,988,400
Series "M"	943,000
Series "N"	60,000

and it is expected that payments thereon will continue.

5. Payments have likewise been made upon the Notes of the Federal Emergency Administration of Public Works, assigned to Reconstruction Finance Corporation, reducing the principal amount as of August 1, 1940, to $1,131,000, making the total amount of the claim of the Reconstruction Finance Corporation, as of said date, $12,630,462.50.

6. The Interstate Commerce Commission, in its Report of February 12, 1940, as modified by its Supplemental Report of June 4, 1940, and its Supplemental Order of June 4, 1940, setting out and approving a Modified Plan of Reorganization for the Debtor, correctly set forth the principal amounts, subject to deduction of payments made and to be made, of all of the claims and statements herein-
724 before listed to be considered for the purposes of a plan of reorganization and its acceptance. Such principal amounts are as set forth in the revised appendix attached to the Supplemental Report of June 4, 1940, except that the designation of General Mortgage Bonds of 1989 as "Series D" and "Series E", respectively, should be corrected to read "Series E" and "Series F", respectively, there being no Series D. Said principal amounts of bonds so used for treatment in the Plan represent the amounts outstanding as shown in the statements less the amounts of all bonds pledged to secure obligations of or assumed by the Debtor and less, also, all bonds held in the treasury of the issuing company. No objection has been made to any of said claims or statements or to the allowance thereof.

7. The Trustees, Petitioners herein, believe it is appropriate that an order be made allowing, for the purposes of the plan or any plan which may be approved by the Interstate Commerce Commission and the Court and its acceptance, the foregoing claims, as evidenced by claims and statements filed as aforesaid, in the principal amounts set forth and used for treatment in the Interstate Commerce Commission's said Reports and Order, with the correction in designation referred to in paragraph 6 above and subject to payments made or to be made together with such unpaid interest, if any, as the plan ultimately approved by the Commission and the Court, if a plan is so approved, may authorize to be included in said claims for the purposes of a plan and its acceptance, such allowance, however, to in no way constitute a determination of the treatment to be accorded said claims, nor to constitute a determination of the extent of any lien.

8. The Trustees, Petitioners herein, believe that said order should also provide that it should not be construed to conclude the subsequent allowance of any claim for the purpose of participation in any plan or of treatment accorded thereunder or to prejudice the rights of any of the holders of pledged bonds.

9. The Trustees, Petitioners herein, believe that the Court, in its order, should reserve full right and jurisdiction to make any further order or orders amplifying, extending, limiting or otherwise modifying the order herein sought and should provide that nothing in the order shall be deemed to constitute an approval of the plan of reorganization which has been certified to this Court by the Interstate Commerce Commission or any other plan of reorganization.

Wherefore, Petitioners pray that the Court enter an order allowing and approving, for the purposes of a plan of reorganization and the exercise of any rights as to its acceptance, the foregoing claims and statements in the principal amounts set forth and used for treatment in the Report of the Interstate Commerce Commission of February 12, 1940, as modified by its Supplemental Report of June 4, 1940, and its Supplemental Order of June 4, 1940, filed herein, with the correction in designation proposed in paragraph 6 hereof and subject to deductions for payments made or to be made, together with such interest, if any, as the plan ultimately approved may authorize to be included, said order to contain appropriate provisions as set forth in paragraphs 8 and 9 in this petition.

A. N. Whitlock,
Counsel for Henry A. Scandrett, Walter J. Cummings and George I Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

A. N. Whitlock and
C. S. Jefferson,
Attorneys for Trustees,
888 Union Station Building,
Chicago, Illinois.

[Verification omitted in printing.]

Filed September 12, 1940. Hoyt King, Clerk.

717 And afterwards, to wit, on the 12th day of September, A. D. 1940, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit: Entered Sept. 12, 1940.

718 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER WITH REFERENCE TO ALLOWANCE OF CERTAIN CLAIMS FOR CERTAIN PURPOSES.

This matter coming on for hearing upon the verified petition filed on behalf of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, with reference to allowance for certain purposes of certain claims, and it appearing that the claims, hereinafter listed, have been evidenced by the filing of verified statements or claims as required by Order No. 2 entered herein on July 6, 1935, and that the allegations of said petition are true, and it further appearing that a copy of said petition and due notice of presentation thereof and hearing thereon have been served on each party to this proceeding entitled to notice, and the Court having considered the petition, heard the statements of Counsel and being fully advised in the premises,

It is ordered,

(1) That the claims of holders of the Bonds and Equipment Trust Certificates and the other claims, hereinafter listed, are, for the purposes of a Plan of Reorganization and the exercise of any rights as to the acceptance of such Plan and for such purposes only, allowed and approved in the principal amounts set forth and used for treatment in the Report of the Interstate Commerce Commission of February 12, 1940, as modified by the Supplemental Report of said Commission of June 4, 1940, and in the Supplemental Order of said Commission of June 4, 1940, which Reports and Order were made in Finance Docket No. 10882, and certified to this Court and certified copies of which have been filed herein, with the correction in designations hereinafter set forth and subject to deductions of

all payments made, or which may be made, together with such unpaid interest, if any, as the Plan ultimately approved and confirmed by the Interstate Commerce Commission and the Court, if a plan is so approved and confirmed, may authorize to be included in said claims for the purposes of a plan and its acceptance. Such allowance is subject to the limitations, conditions and provisions hereinafter set forth.

(2) The designations of the General Mortgage Bonds of 1989, "Series D" and "Series E," respectively, as set out in said Reports and Order of the Interstate Commerce Commission and revised Appendix attached to said Supplemental Report of June 4, 1940, are, for the purposes of this order, corrected to read "Series E" and "Series F," respectively, it appearing that there is no "Series D" of such Bonds.

(3) The allowance affected by this order shall in no way constitute a determination of the treatment to be accorded to said claims, or any of them, nor shall it 719 constitute a determination of the extent or application of any lien.

(4) This order shall not include the subsequent allowance of any claim for the purpose of participation in any Plan of Reorganization or of treatment accorded thereunder or to prejudice the rights of any of the holders of the pledged Bonds.

(5) Nothing in this order shall be deemed to constitute an approval of the Plan of Reorganization which has been certified to this Court by the Interstate Commerce Commission or any other Plan of Reorganization herein.

(6) The Court reserves full right and jurisdiction to make any other or further order or orders amplifying, extending, limiting or otherwise modifying this order.

(7) The Bonds, Equipment Trust Certificates and Claims to which this order refers and applies are as follows:

1. Milwaukee & Northern Railroad Company First Mortgage 4½% Bonds under Indenture dated June 10, 1880.

2. Milwaukee & Northern Railroad Company Consolidated Mortgage 4½% Bonds under Indenture dated February 11, 1884.

3. Chicago, Milwaukee and Gary Railway Company First Mortgage 5% Forty-Year Bonds under Deed of Trust dated April 1, 1908.

4. Chicago, Milwaukee & St. Paul Railway Company General Mortgage Bonds under Indenture dated May 1, 1889.

5. Chicago, Milwaukee, St. Paul and Pacific Railroad Company Fifty-Year 5% Mortgage Bonds under Mortgage and Deed of Trust dated as of February 2, 1925.

6. Chicago, Milwaukee, St. Paul and Pacific Railroad Company 5% Convertible Adjustment Mortgage Bonds under Adjustment Mortgage dated as of February 2, 1925.

7. St. Paul Railway Equipment Trust Certificates, Series "A".

8. Chicago, Milwaukee and St. Paul Railway Equipment Trust Certificates, Series "C".

9. Chicago, Milwaukee and St. Paul Railway Equipment Trust Certificates, Series "D".

10. The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "E".

11. The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "F".

12. The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "G".

13. The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "H".

14. The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "J".

15. The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "K".

16. The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "L".

17. The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "M".

18. The Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "N".

19. Reconstruction Finance Corporation claim upon Collateral Notes (No. 1601). Total Principal Amount August 1, 1940, $11,499,462.50.

20. Reconstruction Finance Corporation, Assignee, Federal Emergency Administrator of Public Works, claim upon Collateral Notes (No. 1600). Principal amount as of August 1, 1940, $1,131,000.

Enter:

Igoe,

Dated September 12, 1940. *District Judge*

Entered Sept. 18, 1940.

715 And afterwards, to wit, on the 13th day of September, A. D. 1940, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

716 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

Friday, September 13, 1940:

The testimony and arguments on objections to the Plan of Reorganization were concluded and the hearing was continued to October 21, 1940, for the purpose of considering claims for allowances for expenses, fees and services incurred or rendered in connection with said proceedings or plan. By said date it was expected that the Report of the Interstate Commerce Commission, fixing maximum limits with respect to the amounts to be allowed for such purposes, would be filed.

It was agreed by the parties in interest that when such Report is filed, all claims for any such allowances should be submitted on the record made before the Examiner for the Interstate Commerce Commission without taking further testimony and that when the Court, after considering such record, fixes the amounts to be allowed to the respective claimants, any claimant desiring to object to the amount so fixed might be heard on October 21st at ten o'clock a. m., or at any subsequent date to which the matter might be continued.

Igoe.

730 And on, to wit, the 27th day of September, A. D. 1940, came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Petition, in words and figures following, to wit:

731 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Sept. 27, 1940.

• • (Caption—60463) • •

PETITION OF TRUSTEES FOR AUTHORITY TO SELL FREE OF MORTGAGE LIENS SIXTY-ONE STEAM LOCOMOTIVES THAT HAVE BEEN RETIRED FROM SERVICE.

The petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, respectfully represents:

1. The Trust Estate has sixty-one old steam locomotives that cannot be economically operated and have heretofore been retired from service. The Trustees have an opportunity to sell some or all of said locomotives at approximately the salvage value thereof. Such salvage value varies from time to time but the total estimated salvage value of said locomotives is $76,025. Said locomotives are of different classes. The class designation, number and estimated salvage value of each of said locomotives are as follows:

Class	Number	Estimated Salvage Value
Alas	21	$ 675.00
Alas	28	675.00
Cle	1376	1,175.00
Cle	1384	1,175.00
Cle	1395	1,175.00
Cle	1396	1,175.00
C2	1301	1,500.00
C2	1303	1,500.00
C2	1304	1,500.00
C2	1305	1,500.00
C2	1307	1,500.00
C2	1308	1,500.00
C2	1311	1,500.00
C2	1312	1,500.00
C2	1315	1,500.00
C2	1324	1,500.00
C2	1327	1,500.00
F4ms	883	1,700.00
F5an	805	1,700.00

Class	Number	Estimated Salvage Value
G5s	1192	825.00
G5s	1193	825.00
G5s	1194	825.00
G5s	1198	825.00
G7as	1075	1,150.00
G7as	1077	1,150.00
G7as	1082	1,150.00
15a	1400	800.00
15a	1411	800.00
15a	1414	800.00
15a	1447	800.00
15a	1464	800.00
15a	1472	800.00
15a	1486	800.00
15a	1488	800.00
15a	1498	800.00
15a	1509	800.00
15a	1511	800.00
15a	1515	800.00
15a	1519	800.00
15a	1521	800.00
15a	1437	1,000.00
732 Klas	900	1,425.00
Klas	902	1,425.00
Klas	905	1,425.00
Klas	907	1,425.00
Klas	909	1,425.00
Klas	913	1,425.00
Klas	916	1,425.00
Klas	931	1,425.00
Klas	934	1,425.00
Klas	938	1,425.00
Klas	945	1,425.00
Klas	946	1,425.00
Klas	947	1,425.00
Lls	769	1,800.00
Llas	766	1,800.00
L2	674	1,800.00
L2	685	1,800.00
L2	694	1,800.00
L2	708	1,800.00
L2	715	1,800.00
	Total.....	$76,025.00

2. Said locomotives, because they are of obsolete type and cannot be economically operated and have been retired from service, are not now used and in the future will not be required for use in connection with the operation of the railroad of the Trust Estate and their sale will not unduly or adversely affect the public interest.

3. Your Petitioners consider the sale prices, at approximately the estimated salvage values as shown above, represent the full, fair value of the respective locomotives and believe the sale thereof would be in the interest of the Trust Estate and creditors and stockholders concerned.

4. All of the above listed locomotives, except No. 883 and No. 766, are subject to the lien of Chicago, Milwaukee & St. Paul Railway Company General Mortgage as the mortgage of first lien and to the liens of Debtor's First and Refunding Mortgage, Mortgage and Deed of Trust, and Adjustment Mortgage, respectively, and said locomotives numbered 883 and 766 are subject to the lien of Debtor's First and Refunding Mortgage as the mortgage of first lien and to the liens of Debtor's Mortgage and Deed of Trust and Adjustment Mortgage, respectively. Said contemplated sales are to be free of mortgage liens.

Wherefore, your Petitioners pray that an order be entered authorizing the sale, free of mortgage liens, of one or more of said sixty-one old steam locomotives bearing the numbers above set forth, respectively, for a price of aproximately the estimated salvage value as shown in the table set forth in this petition, and authorizing the Trustees, Petitioners herein, to request, or join with the Debtor Company in requesting, the Trustee under Chicago, Milwaukee & St. Paul Railway Company General Mortgage and the Trustees under Debtor's First and Refunding Mortgage, Mortgage and Deed of Trust, and Adjustment Mortgage, respectively, to release the respective mortgage liens on said locomotives, and authorizing the Trustees, Petitioners herein, to deposit the proceeds of such sale or sales with the Trustee or Trustees of the mortgage having first lien in accordance with the terms thereof, and authorizing the Trustees subsequently to withdraw said sum or sums so deposited, upon presentation of proper certificate or certificates, to reimburse the treasury of the Trust Estate for an equal amount of the net costs of certain additions and betterments placed subsequent to July

1, 1940, upon the portion or portions of the railroad
733 property of the Trust Estate on which said mortgage or mortgages has or have first lien, all in accordance with the terms thereof.

Henry A. Scandrett,
Walter J. Cummings,
George I. Haight,
Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
By Henry A. Scandrett,
One of said Trustees.

A. N. Whitlock and
C. S. Jefferson,
Attorneys for Trustees.

[Verification omitted in printing.]

Filed September 27, 1940. Hoyt King, Clerk.

Entered Sept. 27, 1940.

734 And afterwards, to wit, on the 27th day of September, A. D. 1940, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

735 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

ORDER AUTHORIZING TRUSTEES TO SELL FREE OF MORTGAGE LIENS SIXTY-ONE STEAM LOCOMOTIVES THAT HAVE BEEN RETIRED FROM SERVICE.

This day coming on to be heard the verified petition of the Trustees for authority to sell free of mortgage liens sixty-one steam locomotives that have been retired from service, and it appearing from the petition that said locomotives cannot be economically operated and are not now required and in the future will not be required for use in connection with the operation of the railroad of the Trust Estate; that the estimated total salvage value for which

it is proposed to sell said locomotives is $76,025; that this amount is deemed to represent the full, fair value of the locomotives to be sold, and their sale is believed to be in the interest of the Trust Estate and creditors and stockholders concerned and will not unduly or adversely affect the public interest; that all of said locomotives, except two, are subject to the lien of Chicago, Milwaukee & St. Paul Railway Company General Mortgage as the mortgage of first lien and to the liens of Debtor's First and Refunding Mortgage, Mortgage and Deed of Trust, and Adjustment Mortgage, respectively, and said two locomotives are subject to the lien of Debtor's First and Refunding Mortgage as the mortgage of first lien and to the liens of Debtor's Mortgage and Deed of Trust, and Adjustment Mortgage, respectively; and it also appearing that a copy of said petition and due notice of presentation thereof and hearing thereon have been served on each party to this proceeding entitled to notice, and the Court having considered the petition, heard the statements of Counsel and being fully advised in the premises, it is

Ordered, that Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, be, and they hereby are, authorized to sell, free of mortgage liens, one or more of said sixty-one old steam locomotives for a price of approximately the estimated salvage value as shown in the table set forth in said petition, and the Trustees, Petitioners herein, are further authorized to request, or join with the Debtor Company in requesting, the Trustee under Chicago, Milwaukee & St. Paul Railway Company General Mortgage and the Trustees under Debtor's First and Refunding Mortgage, Mortgage and Deed of Trust, and Adjustment Mortgage, respectively, to release the respective mortgage liens on said locomotives, and are further authorized to deposit the proceeds of such sale or sales with the Trustee or Trustees of the mortgage having first lien in accordance with the terms thereof, and subsequently to withdraw said sum or sums so deposited, upon presentation of proper certificate or certificates, to reimburse the treasury of the Trust
736 Estate for an equal amount of the net costs of certain additions and betterments placed subsequent to July 1, 1940, upon the portion or portions of the railroad property of the Trust Estate on which said mortgage or mort-

gages has or have first lien, all in accordance with the terms thereof.

Enter:

Igoe,
District Judge.

Dated September 27, 1940.

5488 **Record of Hearing at**

INTERSTATE COMMERCE COMMISSION

Washington.

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Report and order of the Commission, filed and entered October 2, 1940;

Notice of hearing dated June 20, 1940; and

Transcript of the stenographer's notes of the hearing held July 15, 16, 17, 18, and 19, 1940, at Brooklyn, New York, before Examiner Kirby; and Exhibits No. 1 to 23, both inclusive, filed at said hearing,

in Finance Docket No. 10882, Chicago, Milwaukee, St. Paul & Pacific Railroad Company Reorganization, the originals of which are now on file and of record in the office of said Commission.

In Witness Whereof I have hereunto set my hand and affixed the Seal of said Commission this 8th day of October, A. D. 1940.

W. P. Bartel,
Secretary of the Interstate Commerce Commission.

(Seal)

5489 INTERSTATE COMMERCE COMMISSION

Washington.

Finance Docket No. 10882.

Chicago, Milwaukee, St. Paul & Pacific Railroad Company Reorganization.

SUMMARY OF REPORT.

October 2, 1940.

The following table shows the amounts of allowances, from the inception of these proceedings to May 15, 1940, for compensation and reimbursement of expenses to be paid out of the debtor's estate, for which petitions have been filed with the court, together with the maximum limits of such allowances as fixed by the Commission, division 4, in the accompanying report and order.

W. P. Bartel,
Secretary.

Claimant	Amount claimed	Maximum fixed
H. E. Byram, chairman of debtor's board	$ 24,462	Nothing
Cravath, de Gersdorff, Swaine & Wood, counsel for debtor	106,682*	46,682
Institutional Group Committee, insurance companies	12,967	12,967
Sidley, McPherson, Austin & Burgess, counsel	137,836	79,876
Mutual Savings Bank Group Committee, savings banks	948	948
Oliver & Donnally, counsel	16,377	13,377
Charles W. Paltzer, associate counsel	125	125
The National City Bank of N. Y. and William W. Hoffman, mortgage trustees	12,785	9,285
Shearman & Sterling, counsel	25,480	6,980
Montgomery, Hart, Pritchard & Herriott, associate counsel	6,500	2,500
United States Trust Company of N. Y., mortgage trustee	25,257	10,257
Stewart & Shearer, counsel	30,949	9,949
Wilson & McIlvaine, associate counsel	7,610	2,610

* $36,590 of this acount has been paid.

Claimant	Amount claimed	Maximum fixed
Guaranty Trust Company of N. Y., mortgage trustee	16,553	13,553
Davis, Polk, Wardwell, Gardiner & Reed, counsel	23,210	13,210
Tenney, Harding, Sherman & Rogers, associate counsel	4,549	2,049
Chemical Bank & Trust Company, mortgage trustee	5,000	3,000
Wright, Gordon, Zachry & Parlin, counsel	12,610	5,360
D'Ancona, Pflaum & Kohlsaat, associate counsel	6,602	2,102
City Bank Farmers Trust Company, mortgage trustee	10,293	5,472
Mitchell, Taylor, Capron & Marsh, counsel	23,328	10,828
Winston, Strawn & Shaw, associate counsel	7,138	3,638
Lawrence Richardson, technical adviser	1,629	1,629
St. Louis Union Trust Company, mortgage trustee	7,827	3,327
Bryan, Williams, Cave & McPheeters, counsel	7,920	3,920
Protective Committee for Fifty-Year Bonds	635	635
and William Church Osborn	45	45
Hodges, Reavis, Pantaleoni & Downey, counsel	21,332	13,332
Malcolm, Mecartney, associate counsel	475	475
Samuel W. McIntosh, interim counsel	250	250
George H. Parker, technical adviser	3,127	3,127
5490		
H. E. Moulton, technical adviser	1,255	500
J. L. White, technical adviser	549	549
Joseph R. Warner, technical adviser	500	500
Terre Haute First and Refunding Group	789	789
Hunt, Hill & Betts, counsel	8,139	6,639
Protective Committee for Preferred Stock	1,802	1,802
Robert E. Smith, secretary	6,017	875
Broadus J. Clarke, successor secretary	750	750
Edward R. Johnston and Albert K. Orschel, counsel	20,119	5,619
William W. Wakefield, technical adviser	17,706	2,206
Independent Committee for Protection of Debtor's Bondholders	5,000	Nothing
Julius Weiss, counsel	20,826	2,326
Guggenheimer & Untermyer and Sabath, Perlman, Goodman & Rein, counsel for interveners	15,967	5,467
Imperial Trust Company, Limited, John Roth, and Francis W. Keeler, interveners	75	75
Thomas F. Murphy, counsel	906	906
Jack E. Bagon, successor counsel	442	442
McDonald & Richmond, associate counsel	220	220
Shulman, Shulman and Abrams, counsel for interveners	12,937	Nothing
Reconstruction Finance Corporation	953	953
Brobeck, Phleger and Harrison, special counsel	218	218
Carter, Ledyard & Milburn, counsel for equipment trustee	800	300
Total	676,451	312,624

INTERSTATE COMMERCE COMMISSION.

* * (Caption—10882) * *.

Submitted August 2, 1940. Decided October 2, 1940

Upon petitions, maximum limits of final allowances of compensation for services rendered and expenses incurred to May 15, 1940, in connection with the reorganization proceedings and plan, approved.*

Robert T. Swaine and Roswell L. Gilpatric for Chicago, Milwaukee, St. Paul & Pacific Railroad Company, debtor.

A. N. Whitlock for trustees of debtor.

Kenneth F. Burgess, Edwin S. S. Sunderland, Thomas O'G Fitz Gibbon, George John Miller, Henry F. Tenney, Roger R. Leech, Guido Pantaleoni, Jr., Joseph H. Morna, II, Albert K. Orschel, Jack E. Bagon, Fred N. Oliver, Elmer E. Boyner, Harry Hoffman, Theodore E. Rein, A. Marvin Braverman, Sanford H. E. Freund, Jack D. Gunther, Boykin C. Wright, Robert M. Becket, M'Cready Sykes, Cobert Ets-Hokin, Meyer Abrams, R. H. McRoberts, John B. Marsh, Edward E. Watts, Jr., Anthony L. Michel, Irving Herriott, Julius Weiss, Reese D. Alsop, and H. E. Byram for petitioners.

REPORT OF THE COMMISSION.

Division 4, Commissioners Porter, Mahaffie, and Miller by Division 4:

In compliance with an order entered on April 26, 1940, in proceedings No. 60463, pending in the District Court of the United States for the Northern District of Illinois, Eastern Division, for the reorganization of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, referred to herein as the debtor, pursuant to section 77 of the Bankruptcy Act, U. S. Code Title 11, Sec. 205, the various parties in interest filed in the court petitions for allowances of fees and expenses in connection with the debtor's reorganization proceedings and plan. Under the order of the
5491 court the petitions were to be filed on or before May 31, 1940, and were to give a detailed and specific ac-

* Previous reports 212 I. C. C. 150 and 225; 224 I. C. C. 219; 228 I. C. C. 189; 230 I. C. C. 548; 233 I. C. C. 759; 239 I. C. C. 485, and ..... I. C. C. .....

count of services rendered and expenses incurred to May 15, 1940. Unless otherwise stated herein, it will be understood that the allowances claimed in each of the petitions are for services and expenses to that date. Copies of all petitions have been transmitted to us for fixing of maximum limits pursuant to the provisions of the statute. We have held a hearing on these petitions. As amended in minor respects at the hearing, the several claims are as follows:

Petitioner or claimant	Representation or capacity	Allowances requested: Compensation	Disbursements	Total	Group total
H. E. Byram	Chairman of debtor's board of directors	$ 24,462	$	$ 24,462	$ 24,462
Cravath, de Gersdorff, Swaine & Wood	Counsel for debtor	a100,000	6,682	106,682	106,682
Institutional Group Committee	Life Insurance Group		12,967	12,967	
Sidley, McPherson, Austin & Burgess	Counsel for Institutional Group Committee	b127,000	b10,836	137,836	150,803
Mutual Savings Bank Group Committee	Mutual Savings Bank Group		948	948	
Oliver & Donnally	Counsel for Mutual Savings Bank Group Committee	c15,000	d1,377	16,377	
Charles W. Pältzer	Associate counsel for Mutual Savings Group Committee	c125		125	17,450
National City Bank of N. Y. and William W. Hoffman	Trustees under debtor's adjustment mortgage	12,500	e285	12,785	
Shearman & Sterling	Counsel for National City Bank and Hoffman	25,000	480	25,480	
Montgomery, Hart, Pritchard & Herriott	Associate counsel for National City Bank and Hoffman	6,500		6,500	44,765
United States Trust Company of N. Y.	Trustee under general mortgage of debtor's predecessor	25,000	257	25,257	
Stewart & Shearer	Counsel for United States Trust Company	30,000	f949	30,949	
Wilson & McIlvaine	Associate counsel for United States Trust Co.	7,500	f110	7,610	63,816

a—Petition specified $100,000 against which an interim allowance of $30,000 (see 283 I. C. C. 759) is to be credited. Reimbursement of $6,590.29 was also authorized in the cited case.
b—Committee has paid counsel $115,000 and reimbursed him $9,713.
c—Committee has paid counsel $7,500 and has fully paid associate counsel.
d—Committee has reimbursed counsel.
e—Excludes $6.53 disbursed by associate counsel who were reimbursed, through the trustees, by the debtor.
f—Trustee has reimbursed counsel and associate counsel.

Petitioner or claimant	Representation or capacity	Allowances requested: Compensation	Disbursements	Total	Group total
Guaranty Trust Company of N. Y.	Corporate trustee under debtor's fifty-year mortgage	15,000	1,553	16,553	
Davis, Polk, Wardwell, Gardiner & Reed	Counsel for Guaranty Trust Company	22,000	g1,210	23,210	
Tenney, Harding, Sherman & Rogers	Associate counsel for Guaranty Trust Company	4,500	g49	4,549	44,312
Chemical Bank & Trust Company	Trustee under debtor's first and refunding mortgage	5,000		5,000	
Wright, Gordon, Zachry & Parlin	Counsel for Chemical Bank	12,250	h360	12,610	
D'Ancona, Pflaum & Kohlsaat	Associate counsel for Chemical Bank	6,500	102	6,602	24,212
City Bank Farmers Trust Company	Successor trustee under first and consolidated mortgages of Milwaukee & Northern R. R. Co.	9,821	472	10,293	
Mitchell, Taylor, Capron & Marsh	Counsel for City Bank	22,500	1828	23,328	
Winston, Strawn & Shaw	Associate counsel for City Bank	7,000	1138	7,168	
Lawrence Richardson	Technical adviser for City Bank	11,450	1179	1,629	42,388
St. Louis Union Trust Company	Trustee under first mortgage of Chicago, Milwaukee & Gary Ry. Co.	7,500	327	7,827	
Bryan, Williams, Cave & McPheeters	Counsel for St. Louis Union Trust Company	7,500	m420	7,920	15,747
Protective Committee for Fifty-Year Bonds and	Holders of debtor's fifty-year mortgage bonds, series A		635	635	
William Church Osborn	Same		45	45	
Hodges, Reavis, Pantaleoni & Downey	Counsel for Protective Committee for Fifty-Year Bonds and Osborn	n20,000	o1,332	21,332	

g—Corporate trustee has reimbursed counsel and associate counsel.

h—Trustee has reimbursed counsel.

i—Trustee has advanced an undetermined proportion of $25,000 to counsel and has reimbursed them $821 and associate counsel $127 it has paid and reimbursed its technical adviser.

m—Trustee has reimbursed counsel $189.

n—Osborn has paid counsel $2,000.

o—Counsel has disbursed $598 for account of Osborn and $734 for account of the committee. Osborn has reimbursed counsel $594.

Malcolm Mccartney	Associate counsel for above committee	475		475	
Samuel W. McIntosh	Counsel for bondholders who later joined above committee	250		250	
George H. Parker	Technical adviser for Osborn	p2,625	p502	3,127	
H. G. Moulton	Same	p1,255		1,255	
J. L. White	Same	p500	p49	549	
Joseph R. Warner	Same	p500		500	
					28,168
Terre Haute First and Refunding Group	Holders of first and refunding mortgage bonds of Chicago, Terre Haute & Southeastern Ry. Co.		769	769	
Hunt, Hill & Betts	Counsel for Terre Haute First and Refunding Group	7,500	639	8,139	8,908
Protective Committe for Preferred Stock	Holders of debtor's preferred stock		q1,802	1,802	
Robert E. Smith	Predecessor secretary for Protective Committee for Preferred Stock	1,660	r4,357	6,017	
Broadus J. Clarke	Successor secretary for above committee	750		750	
Edward R. Johnston and Albert K. Orschel	Counsel for above committee	19,500	s619	20,119	
William W. Wakefield	Technical adviser for above committee	q17,375	r231	17,706	46,394
5493					
Independent Committee for Protection of Debtor's Bondholders	Holders of debtor's bonds	5,000		5,000	
Julius Weiss	Counsel for Independent Committee	t20,000	u826	20,826	
					25,826

p—Osborn has paid and reimbursed all technical advisers.

q—Having paid Wakefield $1,875, the committee included this amount in its claim. It has herein been excluded from the latters' claim to avoid duplication.

r—The committee has reimbursed Smith $1,725 and fully reimbursed Wakefield.

s—The committee has reimbursed counsel, but their law firm has advanced $882.21 to it.

t—Includes indeterminate amount of compensation for services of Edgar Bernhardt of Chicago, Ill., and Sherman Minton of New Albany, Ind., special counsel.

u—Committee has reimbursed counsel approximately $500.

Petitioner or claimant	Representation or capacity	Allowances requested: Compensation	Disbursements	Total	Group total
Guggenheimer & Untermyer and Sabath, Perlman, Goodman & Rein	Counsel for Anglo Continentale Treuhand, A. G., intervener, holder of Milwaukee & Northern R. Co. bonds				
	Associate counsel for Anglo Continentale Treuhand, A. G.	v15,500	v467	15,967	
					15,967
Imperial Trust Company, Limited, John Roth, and Francis W. Keeler	Holders of consolidated mortgage bonds of Milwaukee & Northern R. R. Co.		75	75	
Thomas F. Murphy	Predecessor counsel for Imperial Trust Co., et al.	w560	w346	906	
Jack E. Bagon	Successor counsel for Imperial Trust Co., et al.	w365	w77	442	
McDonald & Richmond	Associate counsel for Imperial Trust Co., et al.	w220		220	
					1,643
Shulman, Shulman and Abrams	Holders of debtor's adjustment mortgage bonds	12,500	437	12,937	
					12,937
Reconstruction Finance Corporation	Holder of debtor's secured notes		953	953	
Brobeck, Phleger and Harrison	Special counsel for R. F. C.	x205	x13	218	
					1,171
Carter, Ledyard & Milburn	Counsel for Manufacturers Trust Company, successor trustee under equipment trust, series A, of debtor's predecessor	800		800	
					800
Total		621,648	54,803	676,451	676,451

v—Anglo Continentale has paid counsel $1,500 and has reimbursed them in whole or in part.
w—Imperial Trust Co., et al., have paid and reimbursed counsel and associate counsel.
x—R. F. C. has paid and reimbursed special counsel.

The debtor's system extends from Chicago, Milwaukee, and other eastern termini to Seattle, Tacoma, and other points on the Pacific coast, with lines extending to Duluth, Kansas City, Omaha, Rapid City, Fargo, and many other cities. Approximately 11,115 miles of road are operated. The total capitalization of the debtor, taking the no-par-value common stock at $100 a share, was $744,760,713. The principal amounts of the debt of the debtor as of December 31, 1938, comprised equipment obligations $33,322,999; loans from the Reconstruction Finance Corporation, hereinafter called the Finance Corporation, $12,920,463; a note to the Continental Illinois National Bank & Trust Company $1,184,000; bonds of the Chicago, Terre Haute & Southeastern Railway Company, hereinafter called the Terre Haute, consisting of Southern Indiana Railway bonds $7,287,000, Bedford Belt Railway bonds $250,000, Terre Haute first and refunding bonds $8,056,000, and Terre Haute income bonds $6,336,000; Milwaukee & Northern Railroad first-mortgage bonds $2,117,000 and consolidated-mortgage bonds $5,072,000; general-mortgage bonds, series A, $48,241,000, series B, $8,950,000, series C, $42,597,000, series D, $24,000,000, and series E, $15,000,000; 50-year mortgage bonds $106,395,096; convertible adjustment-mortgage bonds $182,873,693; and Chicago, Milwaukee & Gary Railway Company first-mortgage bonds $3,000,000.

Under the Commission's plan of reorganization approved on February 12, 1940, and modified on June 4, 1940*, effective as of January 1, 1939, the capitalization of the reorganized company would be $548,533,321, consisting of
5494 $108,780,470 of fixed-interest debt, $115,257,480 of contingent-interest debt, $111,347,846 of preferred stock, and $213,147,525 of no-par common stock, shown at $100 a share.

The debtor filed a petition for reorganization under section 77 of the Bankruptcy Act on June 29, 1935. With its petition it filed a plan of reorganization dated July 1, 1935, which it modified on August 5, 1935. The committee for a group of institutional investors, hereinafter called the institutional committee, filed a plan on January 10, 1938, and on February 1, 1938, presented a modified plan dated January 24, 1938. The debtor also filed a modification of the committee's plan. No other plans have been filed. Public hearings were held, briefs were filed, an examiner's pro-

* 239 I. C. C. 485.

posed report was issued, exceptions thereto filed, oral argument heard, a plan approved by the Commission issued, and a modified plan issued. The plan approved by the Commission was based largely on the committee's plan as modified by the debtor.

The details of the plan submitted, the proposed modifications, the positions taken by the several parties, and the provisions of the plan finally approved are more fully set forth in the reports of February 12 and June 14, 1940, *supra*.

The several parties had divergent views with respect to the allocation of new securities to the various interests and the extent to which the preferred and common stock should participate in the reorganization through allocation of securities. There was divergence of views with respect to the proper amount of the capitalization and fixed charges, the terms and provisions of the new securities to be issued, the provisions of the additions and betterments fund, the consolidation of the Terre Haute with the debtor, and other matters. The capitalization and fixed charges adopted by the Commission were smaller than were speciefid in any of the plans.

Details of all phases of the activities of the several petitioners for final allowances of compensation and of expenses in connection with the reorganization proceedings and plan before both the Commission and the court are set forth in the respective petitions and in the evidence adduced at the hearings thereon. Details of all disbursements were submitted for the record and, except as otherwise indicated by specific treatment herein, all such expenses are regarded as reasonably necessary in the performance of the services to which they were incident. Expenses in some instances include certain charges for extraordinary stenographic overtime work and night work. We have heretofore found that such charges should be regarded as part of the office overhead expense which is reflected in the compensation allowance, but since they are in the nature of extraordinary expenses actually incurred because of the pressure of the work, no disallowance thereof as expenses will be made, but that fact will be taken into consideration in fixing the maximum limit of compensation. *Chicago & N. W. Ry. Co. Reorganization*, ... I. C. C. .....

The claims for compensation from the debtor's estate for services of petitioners and their counsel and technical ad-

visers will be hereinafter considered. In several instances the parties indicate that, if the entire amount claimed is not allowed from the general estate, liens stipulated in the mortgages will be enforced. The maximum allowances of compensation fixed herein are established for all services, as comprehended by the various petitions, which have been rendered in connection with the reorganization proceedings and plan and which, therefore, under the statute, are compensable out of the debtor's estate within maximum limits fixed by us. In so far as services in connection with
5495 the proceedings and plan are concerned, it does not appear that there are any which are not covered by the petitions and for which a lien should attach to either the general or a special estate. All such services are clearly within our jurisdiction to determine maximum limits; and no lien attaches and no allowance can be made for those services in excess of the amounts fixed by us.

The District Court of the United States for the Northern District of Illinois, Eastern Division, on September 11, 1940, approved the plan of reorganization of the Chicago and North Western Railway Company. In that proceeding the Irving Trust Company, mortgage trustee, took the position that under the mortgage it was entitled to reasonable compensation for itself and its attorney; that it had a lien for all such compensation, and that to the extent that such services and expenses may not be compensated for under the maximum limits fixed by the Commission under section 77 of the Bankruptcy Act, the court should fix the reasonable and proper amount of such compensation and expenses and should direct the payment of such balance out of the properties subject to the lien of the mortgage or their proceeds. In its opinion on this question the court said:

The court is satisfied that it has no power to make allowances for compensation for services compensable under the statute aforesaid in excess of the maximum allowances fixed by the Interstate Commerce Commission whether such excess be payable out of the mortgaged property only or from other sources. Whether, if a mortgage trustee or its counsel earned compensation under the terms of the mortgage for service which was not compensable under the statute aforesaid, the court would have power to make an allowance payable from some source, is a question which it is unnecessary to decide on the present record.

H. E. Byram, chairman of the board of directors of the debtor, is the sole officer of the debtor who has not been in the employment of the trustees of the debtor. As chairman of the board he has attended 8 board meetings and fourteen executive committee meetings since January 1, 1936. He was present at and conducted annual meetings of stockholders, attended most of the hearings before the Commission, and made frequent trips over the debtor's railroad each year. He has gone daily to the offices of the board in New York for eight to nine months in each year but has had no particular duties except those described above although he has kept informed on operating matters, believing that he had some responsibility to the stockholders. He has received no compensation for the performance of his duties since January 1, 1936, other than his director's fee of $20 for each meeting attended. Before the assumption of his office in 1928, the compensation was $25,000 a year, which after several reductions, some of which were voluntary, was fixed at $11,000 in 1935. He requests compensation from January 1, 1936. No claim for expenses is made. In the court's approval of the debtor's petition for reorganization, the maintenance of the debtor's corporate existence during the proceedings was directed. An allowance of compensation to Byram could be only as a representative of the stockholders. In fixing maximum limits of allowances of parties in interest or committees or other representatives of creditors and stockholders, the Commission is limited to expenses incurred in connection with the proceeding and plan. As there has been no showing that the activities of Byram have been in connection with the proceedings and plan, or have been of any benefit to the estate, there should be no allowance to him in this proceeding.

Cravath, de Gersdorff, Swaine & Wood as counsel for the debtor from May 16, 1935 to January 14, 1939, advised and assisted the debtor in formulating, preparing, drafting, and modifying its plan of reorganization and in
5496 reviewing and preparing criticisms of or objection to other plans presented or discussed in the proceedings; participated in negotiations with the principal large security holders and creditors of the debtor; acted as counsel for the debtor in the proceedings before the court and at the hearings before us on the debtor's plan and upon the institutional committee's plan presented in the proceedings; and otherwise represented the debtor in

the reorganization proceedings before us; performed services for the debtor in connection with controversies as to the relative priority of mortgage liens on certain portions of the debtor's lines and the action to be taken to meet the maturity of the Bedford Belt mortgage bonds, which involves the question of the ultimate disposition of the Terre Haute lease. Further details of evidence with respect to services performed to that date are more fully set forth in *Chicago, M., St. P. & P. R. Co. Reorganization*, 233 I. C. C. 759, wherein the Commission, by division 4, fixed the maximum limits of the compensation for services rendered to January 14, 1939, at $30,000 and for expenditures incurred to that date at $6,590.29, without prejudice to the fixing of final maximum limits therefor upon further investigation. These amounts have been paid to the firm. The debtor's trustees' annual reports to the Commission show the following payments to this firm or its members: $15,000 in 1935 (to Swaine, Wood, and Swatland); $5,739 in 1936; $23,180 in 1937; and $50,867 in 1939.

Since January 15, 1939, the firm has participated in the argument before the Commission, has studied the institutional committee's plan of reorganization, prepared and filed a petition for modification thereof, and performed some routine duties. The time devoted to these services was 76¾ hours. The total time devoted to the work from May 16, 1935, has been recorded at 1,787 hours, of which 881½ hours were by partners, and 905½ by associates, the latter being nearly all by senior associates. The petition is for the maximum limits of the amounts to which the firm is entitled in addition to those already paid. The firm asserts that additional unrecorded time was spent, including examination and study of the pertinent law and necessary reading of decisions, and that the total time actually spent is estimated at approximately 3,500 hours. It further asserts that the out-of-pocket cost to the firm on this work, exclusive of the salaries of lawyers, was between $18,000 and $20,000.

The institutional committee represents a group of institutional investors holding bonds and equipment obligations of the debtor aggregating approximately $78,467,100. The committee began its activities in connection with the reorganization on May 23, 1935. It participated in the disposition of proposals presented by the trustees regarding the manner of operation of the property of the debtor; undertook a thorough investigation of the debtor's affairs;

analyzed the data presented by the debtor at hearings before the Commission; inspected the property, participated in obtaining court approval of payment of certain interest; made investigations and held conferences in regard to issuance of equipment-trust certificates, Union Station refinancing, the modification agreement, abandonments, and other matters; participated in proceedings involving questions of reorganization; prepared a plan of reorganization; obtained reopening of the proceedings; prepared for presentation evidence to support its plan; opposed the payment of the principal of the Bedford Belt bonds; opposed the petition of the preferred stock-
5497 holders for reopening the proceedings to submit proposals for consolidation with the Chicago & North Western Railway Company; analyzed the examiner's proposed report; filed exceptions and briefs to the examiner's proposed report; replied to exceptions of other parties; undertook investigations and conferences in preparation for argument; studied and analyzed the Commission's plan and filed a petition for modification thereof; and replied to the petitions of others for modification.

The plan adopted by the Commission was based fundamentally on the plan of the institutional committee, but the Commission adopted a large number of modifications suggested by the debtor. No compensation for services is requested by the committee or the members of its staff, but reimbursement of the actual expenses incurred is requested.

The institutional committee retained the services of the firm of Sidley, McPherson, Austin & Burgess, which since August 1, 1935, has advised and assisted the committee in its activities. Matters requiring the attention of the firm comprised the questions of the payment of interest on the general-mortgage bonds, the formula for the segregation of earnings and expenses, the sale of abandoned property, the purchase of new equipment, the Union Station refinancing, the payment of equipment-trust obligations, the creation of equipment trusts, the payment of interest on Milwaukee & Northern bonds, the impounding of income, the allocation of property to the respective mortgages, the disaffirmance of leases, the consolidation of the debtor and the Terre Haute, evidence as to the value of the property, insolvency as a basis for bankruptcy of the Terre Haute, the after-acquired property clause of the general mortgage, the lien of the general mortgage, the

effect of rate decisions on the debtor's earnings, modification of the Commission's plan of reorganization, the payment of Bedford Belt bonds, consolidation of the debtor with the Chicago & North Western, and plans of reorganization and all questions related thereto.

The firm held conferences, made studies of the plans of reorganization, of other questions with which the firm was concerned, and of the laws relating thereto, participated in proceedings before the court and the Commission, and performed duties in connection with the proceedings. The recorded time devoted thereto by the firm was 6,484 hours, of which 3,654 hours were by senior partners and 2,830 hours by associates, but the firm states that other time not estimated was spent, which was not recorded.

The average recorded time devoted by each partner to legal work in 1937, 1938, and 1939 which could be charged to clients was 1,296 hours a year and by associates 1,538 hours a year. Time spent in traveling and in a foreign city is not included in the above unless engaged in the particular work of a client. Time spent in the general administration of the firm, in reading court decisions or statutes, in keeping up generally with the work of the profession, and general conversations, discussons, or miscellaneous reading are not included. In 1939 the expense of the firm for rent, supplies, library, taxes, and salaries for other than lawyers was $3.40 an hour of recorded time of lawyers, partners, and associates. The average 5498 salary of an associate is approximately $6,000 a year.

The Mutual Savings Bank Group Committee, hereinafter called the mutual savings committee, has participated actively in the proceedings since February 1, 1938. The committee represents mutual savings banks which hold $26,640,800, principal amount, of securities of the debtor. Its officers held conferences with respect to the plan of reorganization of the debtor during 1935 but did not become active again until February 1, 1938, when the committee intervened in the proceedings. Its counsel was active throughout the proceedings. Statistical data, including financial reports, budget estimates, and forecasts, were studied by the committee. Data bearing upon the interests represented by the committee were analyzed and the substance thereof, with recommendations, were circulated to the savings banks, members of the group. The committee, believing that certain provisions of the Commission's plan

were unsatisfactory, directed its counsel to file a petition for modification thereof. The committee opposed the reopening of the proceedings for consideration of the proposal for the consolidation of the debtor with the Chicago & North Western. Members of the committee and its secretary have served without compensation, but the committee has incurred certain expenses for which it requests reimbursement, no charge being made for the work of railroad experts.

Oliver & Donnally, counsel for the mutual savings committee, took part in the proceedings from May 29, 1935, certain preliminary work being done in contemplation of the filing of a petition in bankruptcy by the debtor. In order to avoid duplication of effort, the firm cooperated with other parties where practicable. By arrangement, counsel for the institutional committee was allowed to present the views of both groups to the court, for the positions of both committees were similar. This made it unnecessary for the mutual savings committee to engage local counsel in Chicago, except for service requirement of the court, Charles W. Paltzer, being engaged for that purpose.

Matters to which counsel for the mutual savings committee devoted its attention were the institutional committee's plan, the debtor's suggested modification thereof, the Terre Haute lease, the proposed consolidation of the debtor with the Chicago & North Western, the proposed report of the examiner on a plan of reorganization, the petition of stockholders to reopen the proceedings, the plan of reorganization approved by the Commission, hearings on the plan of reorganization, briefs, oral argument, and correspondence. The time devoted to the proceedings was 1,196¼ hours, of which 596 hours were by partners, and 600¼ hours by senior associates, who receive salaries from $4,500 to $8,500 a year.

The National City Bank of New York and William W. Hoffman are trustees of the adjustment mortgage, which is preceded by three other blanket mortgages on the system. There are $182,873,693 of bonds outstanding under the adjustment mortgage. The trustees request compensation for services rendered and reimbursement for expenses incurred during the proceeding from June 29, 1935. Of the bonds, $10,748,800 were represented by the institutional committee. The trustees have devoted their services to studies of the plan of reorganization filed

5499 in the proceedings and of the plan proposed by the examiner, the preparation of analyses thereof, a study of the record of the proceedings before the Commission and of the new capitalization outlined in the plan approved by the Commission, and its effect on the adjustment bonds. The trustees considered various questions involved in the proceeding and collaborated with counsel in the preparation of briefs and exceptions. The amount of time devoted to the proceeding was not stated. For normal services the trustees were paid $5,000 a year up to 1930, in which year compensation was reduced to $3,000 and was further reduced in 1935 to $2,500 a year. The bonds issued under the adjustment mortgage constitute the largest single claim against the estate.

Shearman & Sterling, counsel for the National City Bank of New York and William W. Hoffman, trustees, participated in the proceedings from June 29, 1935. The questions considered by the firm comprised the procedure to be followed, the impounding of income on properties subject to the adjustment mortgage, the right to require the debtor to account for such income, the necessity for filing proof of claim, the sale and exchange of properties subject to the lien of the adjustment mortgage, the granting of easements with respect to such properties, partial payments and refinancing of equipment-trust obligations of the debtor, payment of the principal of the first-mortgage bonds and of the Bedford Belt bonds, and the release of dividends received from the Indiana Harbor Belt Railroad Company held by the trustees of the first and refunding mortgage.

The above counsel studied the plan of reorganization filed in this proceeding, the modifications thereof, the examiner's proposed plan, and the plan approved by the Commission. The firm took an active part in the proceeding on the plan through attendance and participation in hearings, studies of the record, conferences, preparation of briefs and exceptions, preparation and presentation of oral argument, and consideration of petitions for modification filed by other parties, and the preparation of answers to such parties. The firm opposed provisions of the plan under which the issuance of additional first-mortgage bonds would be limited unless the income reached a certain level. It also opposed provision for the conversion of the new general-mortgage bonds, series B, into stock, and opposed the

creation of a voting trust. The two first-named provisions were eliminated in the Commission's approved plan and the third provision was modified. The time devoted to the work by the firm was stated to be 595 hours, but was partially estimated. Of this time 150 hours were by a partner and 445 by associates, the average salary of the latter being about $8,000 a year.

Montgomery, Hart, Pritchard & Herriott, counsel at Chicago for the National City Bank of New York and William W. Hoffman, trustees, participated in the proceeding from June 29, 1935, and devoted their services largely to matters which came before the court. This firm also concerned itself with the plan of reorganization filed in the proceeding and the proposed modifications thereof generally, and with particular reference to the rights of holders of the adjustment-mortgage bonds and the rights and duties of the
5500 adjustment-mortgage trustee. It informed itself as to the financial structure of the debtor, the indenture of the adjustment mortgage, the relations of the various liens, and the status and rights of claimants and creditors. It cooperated with Shearman & Sterling, the New York counsel, with respect to necessary action on matters and controversies which arose during the proceeding.

The matters which engaged the firm's attention included the impounding of income under the mortgages, the payment of interest on Milwaukee & Northern bonds, the Railroad Credit Corporation notes and general-mortgage bonds, the extension of time for disaffirmance of leases, the payment of the principal of the equipment-trust certificates, the abandonment or acquisition of certain branch lines, the construction of industrial tracks and structures, the issuance of equipment-trust certificates, the refinancing of the Chicago Union Station bonds, the foreclosure by the Finance Corporation of the mortgage on the Bellingham Bay & British Columbia Railroad Company, the filing of claims of bondholders, the payment at maturity of the Bedford Belt bonds, the execution of leases by the debtor, the refinancing of certain equipment-trust certificates, the acquisition of new equipment and the extension of bonds of the Minneapolis & Eastern Railway Company. The time devoted to the work, recorded at 215¼ hours, was almost entirely by partners. The firm estimates that 25 hours additional of unrecorded time was also spent.

The United States Trust Company is trustee under the

general mortgage; bonds actually outstanding $138,788,000 and bonds pledged $11,212,000. It requests compensation for services rendered and reimbursement for expenses from July 1, 1935. The trustee's services included attendance at conferences prior to and preliminary to the filing of a petition in bankruptcy and immediately thereafter, an inspection of the lines covered by the general mortgage and of the Terre Haute, conferences on the debtor's plan, payment of interest on the general-mortgage bonds, and consideration of the institutional committee's plan and the modification thereof. Other matters to which the trustee devoted itself are indicated by the enumeration hereinafter of the questions that were considered by its counsel. The trustee receives no annual fee for normal services, a fixed amount for each bond having been paid when the bonds were issued.

Stewart & Shearer, counsel for the United States Trust Company, trustee, have participated in the proceeding since July 1, 1935. The more important matters which engaged the attention of the firm comprised interventions in the proceedings, the payment of interest on certain obligations, the payment of rentals under leases, acquisitions or abandonments of railroad lines, disaffirmance of leases, impounding of income under the mortgages, payment of equipment-trust maturities, negotiation of new leases, refinancing of the Chicago Union Station Company, the issuance of equipment-trust certificates, the purchase of equipment, trackage agreements, additions and betterments, consolidation of the debtor with the Chicago & North Western, the payment of Bedford Belt bonds, the consideration of plans of reorganization filed in the proceeding, attendance at hearings on same, a study of the record, briefs, the exam-
5501 iner's proposed plan of reorganization, and exceptions to same, oral argument, reopening of the hearing, the plan approved by the Commission, and the petitions for modification thereof. The recorded time devoted to the work by the firm was, 1,091½ hours, the larger part of which was by partners. Many of the above matters concern questions before the court which were handled in the court by the counsel in Chicago. Stewart & Shearer did not attend any of the proceedings in the court.

Wilson & McIlvaine, counsel for the United States Trust Company in Chicago, participated in the proceedings since July 25, 1935, and gave their attention exclusively to mat-

ters before the court. The questions to which they devoted their attentiton included petitions for intervention, payment of interest on equipment-trust and other obligations, impounding of income, acquisition, abandonment or sale of railroad lines, refinancing of the Chicago Union Station Company, the issuance of equipment-trust certificates, the sale of certain properties subject to the general mortgage and disposition of proceeds of the sale, agreements of the debtor with coal companies, modification of leases and payment of matured obligations. The recorded time devoted to the work was 363¼ hours, of which 135¼ hours were by partners and 227¾ hours by associates.

The Guaranty Trust Company of New York is trustee of the 50-year mortgage, bonds outstanding $106,395,096, this issue being preceded by one other blanket mortgage. The trustees request compensation for services rendered and reimbursement for expenses incurred from June 29, 1935. The matters which engaged the attention of the trustee comprised the payment of maturities of equipment-trust certificates, and of interest on other obligations, the acquisition of equipment, the Chicago Union Station refinancing, abandonments of property and accounting for salvage from the same, sale of property, the formula for segregation of earnings, consolidation of the debtor with the Chicago & North Western, earnings of the debtor by mortgage divisions, condemnation of the property owned by the debtor, plans of reorganization filed in the proceeding, the examiner's plan of reorganization, and the Commission's approved plan of reorganization.

The trustee mailed 15,000 circular letters giving notification of a meeting of 50-year mortgage bondholders. As a result of the meeting a protective committee for the bondholders was formed. The trustee has had conferences with representatives of the protective committee, the institutional committee, and with other bondholders, and has made a large number of replies to inquiries of bondholders. According to the estimate of the trust company, about 2,300 hours of time were devoted to the work. The trust company received for normal services as trustee $3,000 a year to July 1, 1935, and $2,500 a year subsequent thereto. The interest of the holders of the 50-year bonds in this reorganization is very large and the treatment of these bondholders under the plan was one of the major problems in the case.

Davis, Polk, Wardwell, Gardiner & Reed, counsel for the Guaranty Trust Company of New York, participated in the proceedings from July 5, 1935. The questions to which the firm devoted its attention comprised the segregation of income of the debtor by mortgage divisions, payment of equipment-trust maturities, payments of interest on the general-mortgage and Terre Haute bonds, the purchase of equipment, petitions for impounding of income, the Chicago Union Station refinancing, the respective liens of mortgages, releases from mortgages of certain prop-
5502 erties, abandonments of property and application of the proceeds thereof, the disposition of dividends from the Indiana Harbor Belt, Bedford Belt maturity, consolidation of the debtor with the Chicago & North Western, income and capital accounts of the debtor, plans of reorganization filed in the proceeding, the examiner's plan of reorganization, the Commsision's approved plan, and petitions for the modification thereof.

The above firm kept informed of proceedings before the court, although attendance at court hearings was left to the counsel at Chicago. It took an active part in the proceedings before the Commission on the plan of reorganization. The institutional committee represented less than 10 percent of the 50-year mortgage bonds and the protective committee for the 50-year bonds organized in 1938 represented less than 9 percent of these bonds. The Guaranty Trust Company felt compelled to represent the remaining bonds of the mortgage. Counsel has been in constant touch with the protective committee since its formation. The time devoted to the work by the firm was recorded at 1,330¾ hours, but 165 additional hours were estimated. Of the recorded time 655¾ hours were by partners and 675 hours by associates.

Tenney, Harding, Sherman & Rogers, counsel at Chicago for the Guaranty Trust Company, participated in the proceeding from August 19, 1935. Their services were devoted entirely to matters before the court. The questions enumerated above to which Davis, Polk, Wardwell, Gardiner & Reed devoted their attention and which came before the court were handled therein by Tenney, Harding, Sherman & Rogers. The time spent on the work by the latter firm was 214¾ hours, of which 35¾ hours were by partners and the remainder by associates.

The Chemical Bank & Trust Company is trustee of the first and refunding mortgage, total bonds $9,866,000, of which $8,923,000 are pledged and $943,000 held in the treasury. It requests compensation for services rendered and reimbursement for expenses incurred from June 29, 1935. Counsel for the Finance Corporation during the proceeding advised the above trustee that it would be expected to protect the interests of the Finance Corporation as holder of the bonds to the same extent as if they were held by the public. The trustee has followed the reorganization-proceeding actively and cooperated with the Finance Corporation, endeavoring so far as possible, to avoid duplication of services. Upon filing of the petition in bankruptcy, the trustee made an examination of the default provisions of the mortgage, and determined the action that was called for. The files of the trustee were reviewed and an analysis of the situation prepared.

The matters which engaged the particular attention of the trustee comprised filing proofs of claim, transfer into the name of a nominee of the trustee of all stock pledged under the first and refunding mortgage, the sale by quitclaim deed of small parcels of property of the debtor without obtaining releases from the lien of the mortgage and the disposition of the proceeds thereof, payment of maturities of Bedford Belt bonds and of interest on Terre Haute bonds pledged under the first and refunding mortgage, extension of maturity of refunding mortgage bonds of the Minneapolis Eastern Railroad Company pledged with the trustee, priorities of liens of certain mortgages, plans of reorganization filed in the proceeding, including the examiner's plan and the Commission's approved plan.

5503 The trustee receives $1,300 a year for normal services. No record was made of the amount of time devoted to the work.

Wright, Gordon, Zachry & Parlin, counsel for the Chemical Bank & Trust Company, trustee, participated in the proceeding from July 1, 1935. Counsel took action to obtain for the trustee all rights in the collateral under the first and refunding mortgage, including interest, dividends, and voting rights, transfer of stock collateral to the trustee, and the segregation of earnings of such collateral for the benefit of the mortgage trustee. Payment at maturity of bonds of the Bedford Belt and of past due interest on the Terre Haute, filing proof of claim, consideration of each

petition filed in the proceeding, intervention in the proceeding before the Commission, analysis of the value of the first and refunding bonds, and of collateral pledged under the mortgage, plans of reorganization filed in the proceeding, including the examiner's plan and the Commission's approved plan, were some of the matters which engaged the attention of counsel. The firm made no appearance in the court in Chicago, but kept in touch with the court proceeding. It participated actively in the proceeding before the Commission, including the presentation of evidence. According to the office record of the firm, 497½ hours were spent on the work, of which 475½ hours were by members of the first and senior associates, and 22 hours by junior associates.

D'Ancona, Pflaum, and Kohlsaat, Chicago counsel for the Chemical Bank and Trust Company, participated in the proceeding before the court, beginning January 11, 1936. The firm filed a petition of intervention in the court, examined all motions and petitions filed in the court proceeding, determined the necessary action, forwarded papers to New York counsel, and appeared in court when necessary. The following problems were the principal matters which engaged the attention of the firm: Granting of easements, leases of property, sales of property by quit-claim deed, sales of property free and clear of encumbrances, segregation of funds received from granting of easements or sales of property, release of funds in the possession of the mortgage trustees, payment of interest and dividends on securities held by the mortgage trustees, payment of principal of the Bedford Belt bonds, and other miscellaneous matters. The firm kept in constant communication with the New York counsel and with other attorneys in the proceeding. It devoted 271 hours to the work, of which 253 hours were by members of the firm, and 18 hours by associates.

The City Bank Farmers Trust Company is trustee under the first mortgage and the consolidated mortgage of the Milwaukee & Northern Railroad Company, bonds outstanding $2,155,000, and $5,092,000, respectively. Of these, $38,000 of the first-mortgage bonds and $20,000 of the consolidated mortgage bonds are pledged under the debtor's first and refunding mortgage. The above issues were assumed by the debtor when it acquired the property subject to the lien. The trustee requests compensation for serv-

ices rendered and reimbursement for expenses incurred since June 29, 1935. It has kept in touch with the proceedings in the court and has participated actively in the proceedings before the Commission. A study of the record before the Commission was made, including the plans of reorganization, and brief and exceptions filed therein. Throughout the proceeding the trustee has been required to exercise judgment with respect to many difficult 3504 problems which has required the continuous attention of one or more of its officers with respect to the administration of the property under the supervision of the court, and has been required to keep in touch with the proceedings before the Commission on plans for reorganization. It received $550 a year for normal services to the date of the filing of the petition in bankruptcy, since which date it has received nothing. The compensation requested does not include payment for such normal services.

Feeling the need of expert assistance in preparing a severance study and in verifying the correctness of earnings segregations contained in certain studies in the record before the Commission, as well as the formula upon which they were based, the trustee employed Lawrence Richardson, mechanical assistant to the vice president and general manager of the Boston & Maine Railroad, to undertake these studies. This involved studies of earnings, valuation of equipment, necessary capital investment, cost of renting foreign equipment, effects on traffic, the use of lake coal instead of Terre Haute coal, the effects of severance and possible purchasers or lessees of the Minneapolis & Northern property. Richardson spent 25 days on the work, which included the preparation of material for introduction at a subsequent hearing before the Commission, and the time required for consultations, and as a witness at the hearing where he testified.

Mitchell, Taylor, Capron & Marsh, counsel in New York for the City Bank Farmers Trust Company, participated in the proceeding from July 10, 1935. The principal matters to which this firm gave its attention were the accounting for income from property under the Minneapolis & Northern mortgage, impounding petitions relating to such income, the sale, lease, or granting of easements of property subject to the lien of the mortgage, trackage arrangements and unification agreements relating to such property, filing proofs of claim, plans of reorganization in the

proceeding, payment of interest on bonds of the mortgage, extension of bonds formerly having the right of extension, segregation of income studies, improvement budgets, classification of creditors, abandonments, purchase of new equipment, creation of equipment trusts, mortgage liens, payment at maturity of the Bedford Belt bonds, consolidation of the debtor with the Chicago & North Western, the examiner's proposed plan, and the Commission's plan of reorganization. The firm participated in all phases of the proceeding before the Commission. According to its records, 1,136¾ hours of time were spent on the work, of which 585¼ hours were by partners, and 551½ hours by associates, mostly senior associates. It estimates that 10 percent to 15 percent additional time not recorded was also spent. On the basis of an average of 1,300 hours of recorded time for each lawyer a year, the firm estimates that overhead amounts to $4.05 a lawyer hour. The hourly compensation of recorded time of associates is estimated to be $6.25 to $6.50.

The above firm states that in its request for compensation it has followed the rule laid down in *In re Osofsky*, 5 Fed. 2, 925, that the following elements should be considered in determining a fair fee: (1) The time which 5505 is fairly and properly to be used in dealing with the case, because this refers to the amount of work necessary; (2) the quality of skill which the situation facing the attorney demanded; (3) the skill employed in meeting that situation; (4) the amount involved, because that determines the risk of the client, and the commensurate responsibility of the lawyer; (5) the result of the case, because that determines the real benefit to the client; and (6) the eminence of the lawyer at the bar or any specialty in which he may be practicing.

Winston, Strawn & Shaw, counsel at Chicago, for the City Bank Farmers Trust Company, participated in the proceeding from August 17, 1935. The firm represented the trust company in the court at Chicago. It conferred with other parties in interest in the proceeding, gave attention to all notices with respect to motions and petitions with special reference to any effect on the mortgage represented by counsel, attended hearings in the court, gave its attention to correspondence, and kept its associate counsel in New York informed with respect to matters of interest in the proceeding. The principal matters to which the firm

gave its attention in the court were those named above in connection with the services of its associate counsel and that were considered by the court. The total time devoted to the work was 382¼ hours, of which 172¼ hours were by senior partners and 210¼ hours by associates.

St. Louis Union Trust Company, petitioner, is co-trustee with the Illinois State Trust Company under the first mortgage of the Chicago, Milwaukee & Gary, bonds actually outstanding $3,000,000, and pledged $2,700,000. Petitioner rendered services and incurred expenses during the proceeding, for which compensation and reimbursement are requested. The Illinois State Trust Company does not request allowances. Default of interest on the bonds having occurred, petitioner and its co-trustee intervened in the proceeding. The petitioner gave its attention to the plans of reorganization filed in the proceeding and made objections thereto. It filed proof of claim, investigated the matter of the disposition of property subject to the lien of the mortgage which had been disposed of without proper accounting for the proceeds thereof to the trustees under the mortgage, examined the question of the release of items of real estate subject to the mortgage, and gave its attention to petitions and briefs filed, and orders of the court in connection with the proceeding.

Bryan, Williams, Cave & McPheeters, counsel at St. Louis, Mo., for the St. Louis Union Trust Company and the Illinois State Trust Company, rendered services during the proceeding from June 14, 1935. This firm devoted itself principally to a study of all matters relating to the issuance and validity of the Chicago, Milwaukee & Gary bonds; an examination of the records and proceedings of the court; filing of proof of claim; participation in the proceeding before the Commission by filing briefs and exceptions, oral argument, and objections to the Commission's plan; investigation of the records and facts with respect to sales of property, appropriations of personal property by the debtor and their effect on the lien of the mortgage; and in-
5506 vestigation of the numerous questions of law in the proceeding. The time devoted to the work was 340¼ hours, and the firm states that in addition 10 days were spent out of the city. Of this time, 185 hours and 5½ days respectively were by partners and the balance by associates.

The protective committee for holders of 50-year mortgage bonds and William Church Osborn, petitioners, rendered

services and incurred expenses during the proceeding. In *Chicago, M., St. P. & P. R. Co. Reorganization*, 228 I. C. C. 180, the protective committee was authorized to serve pursuant to section 77(p) of the Bankruptcy Act. A total of $8,600,000 of bonds were represented by the committee at the first meeting of bondholders. William Church Osborn owns $102,000 of the bonds. Petitioners requested only reimbursement for expenses incurred and fees of attorneys, making no claim for services rendered by members of the committee or by Osborn.

Hodges, Reavis, Pantaleoni & Downey, counsel at New York for the above protective committee and Osborn, rendered services from October 13, 1937. They made a study of the record in the proceeding and other records relevant to the position of the 50-year bonds, considered problems relating to the organization of the protective committee, and solicitations of authorizations from bondholders, drafted petitions, answers, and other legal papers, prepared briefs, made a study of documents filed by other parties, prepared reports and analyses of documents and plans of reorganization, held conferences, investigated legal problems, prepared for and attended hearings, gave attention to the defaults under the various mortgages, and their effect on the 50-year bonds, and performed other duties in connection with the reorganization. The records of the firm show that 924¼ hours were devoted to the work, of which 695¼ hours were by partners and 229 hours by associates.

Malcolm Mecartney, of Chicago, Ill., performed legal services for the protective committee for holders of 50-year bonds from June 20, 1938. He attended hearings in the court for the committee, held conferences, conducted correspondence, and made reports to the New York counsel of the committee. The principal matters to which he gave his attention were the payment of the Bedford Belt bonds, the consolidation of the debtor with the Chicago & North Western, records of earnings of the debtor, intervention in the proceeding, filing of claims of bondholders, and payment of equipment-trust certificates. He devoted 23¾ hours of time to the work.

Samuel W. McIntosh, of Washington, D. C., performed legal services for the protective committee for holders of 50-year bonds from January 31, 1938, in connection with proceedings before the Commission on the plan of reorganization. He attended hearings, performed services for the

committee in connection with intervention in the proceeding, held conferences, and made reports to the New York and Chicago counsel. These services consumed three days for attendance at the Commission's hearings, two days of conferences, and approximately one-half day for office correspondence and reports.

George H. Parker was retained as technical adviser by the protective committee for 50-year bonds and testi-
5507 fied as an expert accountant on the plan of reorganization before the Commission. He was paid fees at the approximate rate of $50 a day, although he worked five additional days without pay. His researches were the foundation for the organization of the committee in connection with the plan. A considerable part of his work was done in cooperation with the accounting staff of the debtor.

H. G. Moulton, retained as a technical adviser by the protective committee for 50-year bonds, had been connected with the engineering firm of Coverdale & Colpitts, and had made a survey of the debtor system in 1925-27. He had knowledge of the debtor's affairs and other experience which made it expedient to retain him. He spent five or six days on the work.

J. L. White, an expert accountant, who had some special experience in regard to the lines west in connection with the consolidation with the Chicago & North Western, was retained as a technical adviser by the protective committee for 50-year bonds. He testified at a hearing before the Commission principally about traffic in connection with the proposed consolidation and spent approximately a week on the work.

Joseph R. Warner, retained as an expert technical adviser by the protective committee for 50-year bonds, was instrumental in mapping the whole program for the committee to follow. He advised particularly with respect to problems on which he recommended that no time be wasted by the committee, and was paid approximately $75 a day. His advice with respect to such problems was a saving of the time of the committee.

A group of holders of Chicago, Terre Haute & Southeastern Railway Company first and refunding 5 per cent bonds, rendered services and incurred expenses during the proceeding, and was permitted to intervene before the Commission on January 25, 1939, after the examiner's report was issued. At that time it represented about $750,000

of bonds. Aside from organization of the group and the formation of a committee organized on May 17, 1940, activities were principally by its counsel. Only reimbursement of expenses of the group and fees of counsel are requested.

Hunt, Hill & Betts, counsel for the above group, participated in the proceeding before the Commission. They made a number of studies and prepared a brief and took part in oral argument on the examiner's report in opposition to the cancellation of the lease of the Chicago, Terre Haute & Southeastern, consolidation of the latter with the debtor, and disturbance or modification of the rights of the holders of bonds. The Commission in its plan did not require a consolidation of the properties, but included other provisions objectionable to the group, and the firm filed a petition for modification of the Commission's report. It also engaged extensively in consultations with bondholders in the various cities, and prepared numerous drafts of protective committee agreements, resulting in the organization of the committee of bondholders. It devoted 662 hours of time to the work, of which 521 hours were by partners and 141 hours by associates, who received salaries of about $2,500 a year. Additional time not recorded, amounting to approximately 75 hours, was also spent, counsel stated.

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The protective committee for holders of prefererd stock of the debtor rendered services and incurred expenses during the proceeding. Reimbursement for expenses is requested. In *Chicago, M. St. P. & P. R. Co. Reorganization*, 224 I. C. C. 219, the protective committee was authorized to serve pursuant to section 77(p) of the Bankruptcy Act. Organization of the committee was begun in July, 1937, and the first meeting held on August 30, 1937. The committee has received authorizations from 1,151 stockholders, holding 76,410 shares of preferred stock. Robert E. Smith was selected as secretary of the committee, and was succeeded on April 1, 1938, by Broadus J. Clark. The committee devoted its efforts primarily to a consolidation of the debtor with the Chicago & North Western. A plan of reorganization was filed in the proceeding before the Commission, based on such consolidation. A hearing was held on the plan, but the Commission did not approve the consolidation. The committee has kept informed of railroad matters and intends to argue in the court against the approval of the plan of reorganization approved by the Commission.

The allowance requested for the services of Smith as secretary of the committee is $1,660 for nine months' work, or at the rate of approximately $184 a month. The allowance requested is for part-time services, it being contemplated that additional claims will be made in connection with other reorganization proceedings before us. The claim covers services for two months, July and August, 1937, before Smith was appointed secretary of the committee. Pending a showing that the total allowances claimed for services in connection with all such proceedings are reasonable, we are of the view that we should approve at this time only an interim allowance equal to $100 a month as compensation for his services as committee secretary and $25 a month for his expenses, both for a period of seven months. This treatment is consistent with our similar action fixing an interim allowance for Smith in the proceedings for reorganization of the Chicago & North Western Railway Company. ..... I. C. C. ..... We have assigned for further hearing the matter of Smith's petitions for compensation and reimbursement of expenses in this proceeding, in the Chicago & North Western Railway Company reorganization and in the Missouri Pacific Railroad Company reorganization, Finance Docket No. 9918. We are unable to fix a final maximum for Smith's allowances in these proceedings until conclusion of the hearing and consideration of that record.

The services of Broadus J. Clark, successor to Smith as secretary, extended over a period of 25½ months.

Edward R. Johnston and Albert K. Orschel, of the firm of Poppenhusen, Johnston, Thompson & Raymond, are counsel for the protective committee for holders of preferred stock of the debtor, and performed services from July 21, 1937. They took part in numerous conferences, advised the committee with respect to its organization and functioning, took part in the hearing before the Commission for authorization of the committee to serve, studied the financial condition of the debtor, presented testimony in support of the consolidation of the debtor with the Chicago & North Western at hearings before the Commission, presented exceptions to the examiner's report, 5509 and argued for the plan of consolidation before the Commission. Time devoted to the work by them is recorded at 1,014 hours, of which 986 hours were by partners and 28 hours by associates. In addition, 50 hours of time is estimated to have been spent.

William W. Wakefield was special technical adviser for the protective committee for holders of preferred stock. He was retained on account of having previously prepared a report on the debtor. He made a study of the financial situation of the debtor, the condition of its property, and the savings which could be obtained through its consolidation. His testimony on consolidation was given at a hearing before the Commission. Thereafter, he conducted his studies on consolidation and reorganization, cooperating and conferring with the counsel for the committee with respect thereto. The time devoted to the work by Wakefield and assistants was 2,088 hours, or 261 days. Of the latter, 217 days were by Wakefield, for which compensation is requested at $75 a day, and 44 days were by assistants, for which compensation is requested at $25 a day. The study for consolidation covered both the Milwaukee and the Chicago & North Western. In our opinion, the allowance approved in the North Western case plus the amount which the committee has paid in the Milwaukee case will constitute a fair and reasonable allowance for Wakefield for his services as a whole.

The independent committee for bondholders of the debtor requests allowance of compensation for services rendered and reimbursement for expenses incurred. The committee was formed in July, 1935, and represented $125,000 of bonds at that date owned by eight parties. The committee conducted correspondence, pursued investigations, made financial and operating studies, assembled facts, and prepared analyses for use by counsel. It kept informed of the progress of the reorganization, distributed printed and other reports to security holders of the debtor, and answered inquiries. The committee takes the position that its members have rendered expert services of an accounting and financial character. It kept no record of time spent by members on the work, but met with counsel on 40 separate days, totaling 84 hours, and estimates that this was about one-half of the time spent by the members. Under subsection (c) (12) of section 77, the actual and reasonable expenses of a committee may be paid from the debtor's estate, but no provision is made for the compensation of members of a committee. The Commission, accordingly, has heretofore found that it has no right to fix maximum allowances of compensation for committee members, and none will be fixed in this case.

Julius Weiss, counsel for the independent committee, of

the firm of Kadel, Sheils & Weiss, of New York, rendered services and incurred expenses during the proceeding from July 15, 1935. The compensation requested includes compensation for Edgar Bernhardt, counsel at Chicago, and Sherman Minton, counsel of New Albany, Indiana, who advised Weiss with respect to proceedings before the court. Weiss's services were devoted to investigations and examinations of the facts, consideration of practical and legal problems arising during the reorganization, formulation and preparation of petitions, preparation of a proposed plan, briefs, exceptions, and other documents on behalf of the committee, examination of applications, briefs, plans and exceptions, filed by parties in the proceeding, reports and orders of the Commission and its examiners, attendance and participation at hearings before the Commission 5510 on the plan of reorganization, attendance at hearings before the court on the appointment of trustees, communications, conferences and advice to members of the committee. He contends that the principles held by the committee on a plan of reorganization prevailed in the final plan with respect to the amount of the capital structure, the amount of the new debt, the appointment of reorganization managers, and the appointment of the directors of the reorganized company. His total recorded time, a partner in his firm, was 649 hours. He also estimates that approximately 325 hours additional were spent by associates who received from $35 to $60 a week.

The independent committee represented a comparatively small interest. Its counsel contributed very little to the proceeding and his allowance should be substantially less than the amount of his claim. Voluntary, gratuitous services rendered by attorneys for creditors or committees in the administration of the estate should not be compensated out of the estate. *In Re Paramount-Publix Corp.*, 12 F. Supp. 823; *In Re New York Investors*, 79 F. (2d) 182; *In re Eureka Upholstering Co.*, 48 F. (2d) 95. Counsel's services were of little benefit to the estate, except possibly in the matter of the appointment of trustees.

Guggenheimer & Untermyer, of New York, and Sabath, Perlman, Goodman & Rein, of Chicago, petitioners, took part in the proceeding from July 6, 1935 before the court, and the Commission as counsel for the Anglo-Continentale Treuhand, A. G., which owned unextended Milwaukee & Northern bonds, $100,000 of the consolidated mortgage, and $1,000 of the first-mortgage bonds. Petitioners inter-

vened and took part in the proceedings before the court and the Commission, examined and analyzed reports of the debtor's operations with specific reference to the Milwaukee & Northern, attended hearings before the Commission, filed exceptions to the examiner's report, and presented oral argument. In the court the petitioners took part in legal controversies regarding classification of claims, payment of interest to holders of unextended Milwaukee & Northern bonds, and payment of interest on other bonds. They obtained an agreement for the extension of the unextended Milwaukee & Northern bonds, and for payment of interest on such bonds and endeavored to have income of the Milwaukee & Northern segregated and sequestered. From the inception of the proceedings they examined and kept informed concerning the record thereof, and had conferences and correspondence with parties of record and others. No accurate diary entries of time spent by Guggenheimer and Untermyer were kept, but they estimated that not less than 8 days were spent away from the office of the firm, and in addition, not less than 547½ hours, or a total of 621 hours were devoted to the work, all by associates. In addition, there was said to be some unrecorded time. The time spent by Sabath, Perlman, Goodman & Rein is recorded at 301¼ hours, and the firm estimates that 150 additional hours were spent. Of the 451¼ hours, the firm estimates that 300 hours were by partners.

The above counsel made some contribution that was of benefit to the estate of the debtor, but their services were largely in the interest of a particular owner of bonds and to a large extent are not found to have been of benefit to the estate. The value of their services should be fixed accordingly.

The Imperial Trust Company, Limited, John Roth, and Francis W. Keeler, petitioners, are holders of $87,000 of unextended Milwaukee & Northern consolidated mort-
5511 gage bonds. These petitioners were advised by counsel that a diversity of interest might arise in the proceeding between holders of extended bonds, and holders of unextended bonds that the trustee under the mortgage could not serve equitably the holders of both classes of bonds, and that a classification of claims had been made which failed to take cognizance of the rights of petitioners' bonds. Accordingly, the petitioners intervened in the proceedings before the court and the Commission. Allowances requested are only for compensation of counsel and for disbursements.

Thomas F. Murphy, of New York, was first employed as counsel for the above petitioners and rendered services from August, 1935, to March 27, 1937. He prepared petitions for intervention before the court and the Commission, participated in hearings before the Commission commencing August 5, 1935, prepared papers, and took part in court on the questions of the extension of the unextended consolidated bonds and of the payment of interest on the general-mortgage bonds, attended conferences, and conducted correspondence. The estimated time devoted to the work was 448 hours.

Jack E. Bagon, of New York, succeeded Murphy as counsel for the petitioners and rendered services from June, 1937, to December, 1938. He participated in hearings before the Commission, filed exceptions to the examiner's report on a plan of reorganization, prepared objections and exceptions to the classification of claims in the court, and rendered other services. The estimated time devoted to the work was 208½ hours.

McDonald & Richmond, of Chicago, rendered services as associate counsel for the above petitioners from April 9, 1937, to December 19, 1938. Counsel attended conferences, prepared and served motions, petitions and notices in the court, and conducted correspondence. The estimated time devoted to the work was 84½ hours.

Shulman, Shulman & Abrams represent holders of $31,500 of convertible adjustment-mortgage bonds, and performed services and incurred expenses from July 18, 1935. They intervened in the proceeding before the court and the Commission, participated in hearings before the Commission on a plan of reorganization, filed exceptions to the report of the examiner on a plan, and filed a petition for modification of the Commission's plan. They participated in the court proceedings on the question of the appointment of trustees, examined notices, motions, and petitions, and appeared in court whenever necessary. They state that their efforts were primarily responsible for the abandonment of the first plan, and the abandonment of the proposal for a voting trust. We are not persuaded that the evidence supports such a statement. The firm submitted a statement showing the matters attended to on specific dates, but had no statement of time spent on the work. Its estimate of the time spent is 1,000 hours. We find that the services rendered were of no benefit to the estate.

The Finance Corporation requests allowances for reimbursement of expenses during the proceeding, including services of special counsel, no request being made for compensation for attorneys on the staff of that corporation. The expenditures of the corporation were for transportation of attorneys of the staff to Chicago and New York, and for printing and transcripts of the record in the proceeding.

Brobeck, Phleger & Harrison, of San Francisco, were special counsel of the Finance Corporation in connection with the suit by that corporation against the Bellingham Bay & British Columbia Railroad Company in order to prevent the State statute of limitations from running against that company's obligations. They rendered services and incurred expenses from January 15, 1937, to March 19, 1940. The recorded time devoted to the work was 24 hours and 55 minutes, of which 7 hours and 25 minutes were by senior attorneys and 17½ hours by junior attorneys.

Carter, Ledyard & Milburn rendered services as counsel to the Manufacturers Trust Company, successor trustee of equipment trust, series A, from July 18, 1935, to July 24, 1939. They prepared proof of claim, examined applications, petitions and orders in the court, examined the report of the examiner on a plan of reorganization, and made studies in connection with remedies for the failure to replace equipment under the equipment trust agreement. The time devoted to the work was 38¾ hours.

Compensation of all claimants. In fixing the maximum limits of allowances to be paid out of the debtor's estate, we will give consideration, among other things, to the benefits derived by the debtor's estate from the several services performed. In view of the clear duplication of effort involved in the examination and review of the same matters by a large number of the parties, and the numerous conferences of many parties, which the statements of services disclose, we are satisfied that not all of the services rendered may properly be considered as entitled to a full measure of compensation from the estate. Our conclusions in this respect reflect also our views as to the reasonable total cost to the estate for what, up to the date covered by the petitions, had been accomplished in the reorganization of the debtor, considering the size of the estate, the complicated nature of its financial structure, the period covered by the trusteeship, and the time devoted by the parties to

the proceeding. We have also considered the eminence of counsel participating in the proceeding.

Moreover, the compensation claims of the several petitioners represent their personal and self-interested judgments as to the value of their respective services, and, of course, we are not bound to accept, without any modification whatever, those judgments, even though all of the services of a particular individual might have been rendered wholly for the benefit of the estate and free from any motivation by self-interest. Otherwise, the statutory requirement that the Commission fix maximum limits of allowances would be rendered nugatory. Mere participation in hearings, offering advice, suggestions, or criticism of themselves furnish no basis for allowance. *In re Paramount Public Corp.*, 2 Cir., 75 Fed. 2nd 588, certiorari denied *Paramount* v. *Publix Corp.*, 300 U. S. 655.

The total of the allowances hereinafter stated as the maximum fixed by us as reasonable for each of the petitioners is $312,624. This we find from a consideration of the foregoing factors, and of all other relevant facts and circumstances, including those set out in the petitions and in this report, and from a consideration of them, with respect to the claims of each individual petitioner, to be a reasonable total maximum limit for the services rendered by the petitioners up to May 15, 1940, as covered by the petitions.

5513 Expenses of all claimants.—Certain claims for expenses were filed by the protective committee for preferred stock and the mutual savings committee subsequent to the date fixed by the court for filing claims but such claims have been recognized herein.

The exhibit showing the expenses of the chairman of the institutional committee indicates that $11 was erroneously included in the statement first filed and there is an apparent duplication of another charge of $60. Accordingly, the sum of $71 is deducted from the total claim and the allowance approved.

Sidley, McPherson, Austin & Burgess, counsel for the institutional committee, filed claims for traveling expenses of $4,510. Burgess frequently traveled with a member of that firm to attend committee meetings and conferences in New York, and John Dern, of his office, disbursed $143.67 to attend hearings before the Commission on a plan for reorganization of the Missouri Pacific Railroad Company.

The per diem subsistence expenses of Burgess were in excess of a reasonable amount. We find that the traveling expenses of the above firm reasonably chargeable to the debtor's estate should be $960 less than the total claimed.

Conclusions.

We conclude:

1. That in view of the nature and extent of the services rendered, the contributive value thereof, and the benefit therefrom accruing to the debtor's estate, we should fix the following maximum limits of final allowances to be paid out of the debtor's estate to the petitioners and claimants, as hereinafter indicated, as reasonable compensation for all services rendered and as reimbursement for all actual and reasonable expenses incurred by them in connection with the proceedings and plan of reorganization of the debtor to May 15, 1940, such allowances to cover any office or other overhead expenses in connection with such services, without prejudice to further allowances of fees and expenses for periods subsequent thereto upon appropriate supplemental petitions:

(a) For services rendered by H. E. Byram, chairman of the board of directors of the debtor, nothing.

(b) For services rendered and expenses incurred by Cravath, de Gersdorff, Swaine & Wood, counsel for the debtor, $40,000 and $6,682, respectively.

(c) For expenses incurred by the institutional committee, representing a life insurance group, $12,967; for services rendered and expenses incurred by Sidley, McPherson, Austin & Burgess, its counsel, $70,000 and $9,876, respectively.

(d) For expenses incurred by the mutual savings committee, representing the Mutual Savings Bank group, $948; for services rendered and expenses incurred by Oliver & Donnally, its counsel, $13,000 and $377, respectively; and for services rendered by Charles W. Paltzer, its counsel, $125.

(e) For services rendered and expenses incurred by the National City Bank of New York and William W. Hoffman, as mortgage trustees, $9,000 and $285, respectively; for services rendered and expenses incurred by Shearman & Sterling, their counsel, $6,500 and $480, respectively; and for services rendered by Montgomery, Hart, Pritchard & Herriott, their counsel, $2,500.

(f) For services rendered and expenses incurred by the United States Trust Company of New York, as mort-
5514 gage trustee, $10,000 and $257, respectively; for services rendered and expenses incurred by Stewart & Shearer, its counsel, $9,000 and $949, respectively; and for services rendered by Wilson & McIlvaine, its counsel, $2,500 and $110, respectively.

(g) For services rendered and expenses incurred by the Guaranty Trust Company of New York, mortgage trustee, $12,000 and $1,553, respectively; for services rendered and expenses incurred by Davis, Polk, Wardwell, Gardiner & Reed, its counsel, $12,000 and $1,210, respectively; and for services rendered and expenses incurred by Teeney, Harding, Sherman & Rogers, its counsel, $2,000 and $49, respectively.

(h) For services rendered by the Chemical Bank & Trust Company, as mortgage trustee, $3,000; for services rendered and expenses incurred by Wright, Gordon, Zachry & Parlin, its counsel, $5,000 and $360, respectively; and for services rendered and expenses incurred by D'Ancona, Pflam & Kohlsaat, its counsel, $2,000 and $102, respectively.

(i) For services rendered and expenses incurred by the City Bank Farmers Trust Company, as mortgage trustee, $5,000 and $472, respectively; for services rendered and expenses incurred by Mitchell, Taylor, Capron & Marsh, its counsel, $10,000 and $828, respectively; for services rendered and expenses incurred by Winston, Strawn & Shaw, its counsel, $3,500 and $138, respectively; and for services rendered and expenses incurred by Lawrence Richardson, its technical adviser, $1,450 and $179, respectively.

(j) For services rendered and expenses incurred by the St. Louis Union Trust Company, as mortgage trustee, $3,000 and $327, respectively; and for services rendered and expenses incurred by Bryan, Williams, Cave & McPheeters, its counsel, $3,500 and $420, respectively.

(k) For expenses incurred by the protective committee for the 50-year bonds and William Church Osborn, representing holders of those bonds, $635 and $45, respectively; for services rendered and expenses incurred by Hodges, Reavis, Pantaleoni & Downey, their counsel, $12,000 and $1,332, respectively; for services rendered by Malcolm Mecartney, their counsel, $475; for services rendered by Samuel W. McIntosh, their counsel, $250; for services ren-

dered and expenses incurred by George H. Parker, their technical adviser, $2,625 and $502, respectively; for services rendered by H. E. Moulton, their technical adviser, $500; for services rendered and expenses incurred by J. D. White, their technical adviser, $500 and $49, respectively; and for services rendered by Joseph R. Warner, their technical adviser, $500.

(l) For expenses incurred by the Terre Haute group, representing holders of first and refunding mortgage bonds of the Chicago, Terre Haute & Southeastern, $769; and for services rendered and expenses incurred by Hunt, Hill & Betts, its counsel, $6,000 and $639, respectively.

(m) For services rendered by the protective committee for preferred stock, nothing; and for expenses incurred by such committee $1,802; for services rendered and expenses incurred by Robert E. Smith, its secretary; $700 and $175, respectively, as an interim allowance only; for services rendered by Broadus J. Clarke, its successor secretary, $750; for services rendered and expenses incurred by Edward R. Johnston and Albert K. Orschel, its counsel, $5,000 and $619, respectively; and for services rendered and expenses incurred by William W. Wakefield, its technical adviser, $1,875 and $331, respectively.

5515 (n) For services rendered by the independent committee for protection of the debtor's bondholders, nothing; and for services rendered and expenses incurred by Julius Weiss, its counsel, $1,500 and $826, respectively.

(o) For services rendered and expenses incurred by Guggenheimer & Untermyer and Sabath, Perlman, Goodman & Rein, counsel for the Anglo Continentale Treuhand, A. G., holder of bonds, $5,000 and $467, respectively.

(p) For expenses incurred by the Imperial Trust Company, Limited, John Roth, and Francis W. Keeler, holders of bonds, $75; for services rendered and expenses incurred by Thomas F. Murphy, their counsel, $560 and $346, respectively; for services rendered and expenses incurred by Jack E. Bagon, their counsel, $365 and $77, respectively; and for services rendered by McDonald & Richmond, their counsel, $220.

(q) For services rendered and expenses incurred by Shulman, Shulman & Abrams, representing holders of the debtor's bonds, nothing.

(r) For expenses incurred by the Finance Corporation, $953; and for services rendered and expenses incurred by

Brobeck, Phleger & Harrison, its counsel, $205 and $13, respectively.

(s) For services rendered by Carter, Ledyard & Milburn, counsel for the Manufacturers Trust Company, mortgage trustee, $300.

2. That payments should be made to the petitioners and claimants (or their personal representatives) rendering the services and incurring the expenses as indicated in the foregoing subparagraphs (a) to (s), inclusive, except that in cases where counsel and technical advisers have already been paid by their principals in whole or in part, the amounts payable from the debtor's estate should be payable to such principals to such extent only that the principals have paid their counsel and technical advisers.

3. Since, as hereinbefore stated, the petitions cover generally the period terminating on May 15, 1940, without prejudice to the right to file further petitions with respect to periods subsequent thereto, we should retain jurisdiction to determine after further investigation upon the filing of supplemental petitions the ultimate maximum limits of allowances to the conclusion of the reorganization proceedings.

An appropriate order will be entered.

5516 ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 2d day of October, A. D. 1940.

(Caption—10882)

Investigation of the matters and things involved in the petitions filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, in proceedings No. 60463, pending therein for the reorganization of The Chicago, Milwaukee, St. Paul & Pacific Railroad Company, debtor, and pursuant to Order No. 655 of said court in that proceeding, as referred to in the report issued herewith, for allowances of compensation for services rendered and expenses incurred in connection with the proceedings and plan of reorganization having been made, a hearing having been held, and the division having, on the date hereof, made and filed a report containing its findings

of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the following sums be, and they are hereby, fixed as the final maximum limits of final allowances to be paid out of the estate of the debtor as reasonable compensation for all services rendered, and as reimbursement for all actual and reasonable expenses incurred by the petitioners and claimants in connection with the proceedings and plan of reorganization of the debtor, such allowances to cover any office or other overhead expenses in connection with such services to May 15, 1940, without prejudice to further allowances of fees and expenses for periods subsequent thereto upon appropriate supplemental petitions:

(a) For services rendered by H. E. Byram, chairman of the board of directors of the debtor, nothing.

(b) For services rendered and expenses incurred by Cravath, de Gersdorff, Swaine & Wood, counsel for the debtor, $40,000 and $6,682, respectively.

(c) For expenses incurred by the institutional committee, representing a life insurance group, $12,967; for services rendered and expenses incurred by Sidley, McPherson, Austin & Burgess, its counsel, $70,000 and $9,876, respectively.

(d) For expenses incurred by the mutual savings committee, representing the Mutual Savings Bank group, $948; for services rendered and expenses incurred by Oliver & Donnally, its counsel, $13,000 and $377, respectively; and for services rendered by Charles W. Paltzer, its counsel, $125.

(e) For services rendered and expenses incurred by the National City Bank of New York and William W. Hoffman, as mortgage trustees, $9,000 and $285, respectively; for services rendered and expenses incurred by Shearman & Sterling, their counsel, $6,500 and $480, respectively; and for services rendered by Montgomery, Hart, Pritchard & Herriott, their counsel, $2,500.

(f) For services rendered and expenses incurred by the United States Trust Company of New York, as mortgage trustee, $10,000 and $257, respectively; for services rendered and expenses incurred by Stewart & Shearer, its counsel, $9,000 and $949, respectively; and for services
5517 rendered by Wilson & McIlvaine, its counsel, $2,500 and $110, respectively.

(g) For services rendered and expenses incurred by

the Guaranty Trust Company of New York, mortgage trustee, $12,000 and $1,533, respectively; for services rendered and expenses incurred by Davis, Polk, Wardwell, Gardiner & Reed, its counsel, $12,000 and $1,210, respectively; and for services rendered and expenses incurred by Tenney, Harding, Sherman & Rogers, its counsel, $2,000 and $49, respectively.

(h) For services rendered by the Chemical Bank & Trust Company, as mortgage trustee, $3,000; for services rendered and expenses incurred by Wright, Gordon, Zachry & Parlin, its counsel, $5,000 and $360, respectively; and for services rendered and expenses incurred by D'Ancona, Pflaum & Kohlsaat, its counsel, $2,000 and $102, respectively.

(i) For services rendered and expenses incurred by the City Bank Farmers Trust Company, as mortgage trustee, $5,000 and $472, respectively; for services rendered and expenses incurred by Mitchell, Taylor, Capron & Marsh, its counsel, $10,000 and $828, respectively; for services rendered and expenses incurred by Winston, Strawn & Shaw, its counsel, $3,500 and $138, respectively; and for services rendered and expenses incurred by Lawrence Richardson, its technical adviser; $1,450 and $179, respectively.

(j) For services rendered and expenses incurred by the St. Louis Union Trust Company, as mortgage trustee, $3,000 and $327, respectively; and for services rendered and expenses incurred by Bryan, Williams, Cave & McPheeters, its counsel, $3,500 and $420, respectively.

(k) For expenses incurred by the protective committee for the 50-year bonds and William Church Osborn, representing holders of those bonds, $635 and $45, respectively; for services rendered and expenses incurred by Hodges, Reavis, Pantaleoni & Downey, their counsel, $12,000 and $1,332, respectively; for services rendered by Malcolm Mecartney, their counsel, $475; for services rendered by Samuel W. McIntosh, their counsel, $250; for services rendered and expenses incurred by George H. Parker, their technical adviser, $2,625 and $502, respectively; for services rendered by H. E. Moulton, their technical adviser, $500; for services rendered and expenses incurred by J. L. White, their technical adviser, $500 and $49, respectively; and for services rendered by Joseph R. Warner, their technical adviser, $500.

(l). For expenses incurred by the Terre Haute group, representing holders of first and refunding mortgage bonds of the Chicago, Terre Haute & Southeastern Railway Company, $769; and for services rendered and expenses incurred by Hunt, Hill & Betts, its counsel, $6,000 and $639, respectively.

(m) For services rendered by the protective committee for preferred stock, nothing; and for expenses incurred by such committee, $1,802; for services rendered and expenses incurred by Robert E. Smith, its secretary, $700 and $175, respectively, as an interim allowance only; for services rendered by Broadus J. Clarke, its successor secretary, $750; for services rendered and expenses incurred by Edward R. Johnston and Albert K. Orschel, its counsel, $5,000 and $619, respectively; and for services rendered and expenses incurred by William W. Wakefield, its technical adviser, $1,875 and $331, respectively.

5518 (n) For services rendered by the independent committee for protection of the debtor's bondholders, nothing, and for services rendered and expenses incurred by Julius Weiss, its counsel, $1,500 and $826, respectively.

(o) For services rendered and expenses incurred by Guggenheimer & Untermyer and Sabath, Perlman, Goodman & Rein, counsel for the Anglo Continentale Treuhand A. G., holder of bonds, $5,000 and $467, respectively.

(p) For expenses incurred by the Imperial Trust Company, Limited, John Roth, and Francis W. Keeler, holders of bonds, $75; for services rendered and expenses incurred by Thomas F. Murphy, their counsel, $560 and $346, respectively; for services rendered and expenses incurred by Jack E. Bagon, their counsel, $365 and $77, respectively; and for services rendered by McDonald & Richmond, their counsel, $220.

(q) For services rendered and expenses incurred by Shulman, Shulman & Abrams, representing holders of the debtor's bonds, nothing.

(r) For expenses incurred by the Reconstruction Finance Corporation $953; and for services rendered and expenses incurred by Brobeck, Phleger & Harrison, its counsel, $205 and $13, respectively.

(s) For services rendered by Carter, Ledyard & Milburn, counsel for the Manufacturers Trust Company, mortgage trustee, $300.

It is further ordered, That such payments shall be made to the petitioners and claimants, or their personal repre-

sentatives, rendering the services and incurring the expenses as indicated in the foregoing subparagraphs (a) to (s), inclusive, except that in cases where counsel and technical advisers have already been paid by their principals in whole or in part, the amounts payable from the debtor's estate shall be paid to such principals to the extent only that such principals have paid their counsel and technical advisers.

And it is further ordered, That with respect to further services and expenses and with respect to services and expenses for which the foregoing limits are interim only, the Commission shall retain jurisdiction hereafter and upon further investigation to determine and fix the ultimate maximum limits of allowances to the conclusion of the reorganization proceedings.

By the Commission, division 4.

W. P. Bartel,
Secretary.

(Seal)

5519 F. D. No. 10882. BG:GF

INTERSTATE COMMERCE COMMISSION,
Washington.

(Caption—10882)

ASSIGNMENT OF HEARING ON PETITIONS FOR ALLOWANCES OF FEES AND EXPENSES.

The above-entitled proceeding is assigned for hearing on July 15, 1940, at 10 o'clock a. m., eastern daylight saving time, at the Hotel St. George, Brooklyn, N. Y., before Examiner Homer H. Kirby, on the matter of all petitions filed with the District Court of the United States for the Northern District of Illinois, Eastern Division, pursuant to the court's order of April 26, 1940, and referred to the Interstate Commerce Commission in accordance with order 49 of General Orders in Bankruptcy of the Supreme Court of the United States making claims for allowances out of the debtor's estate for compensation for services rendered and reimbursement of expenses incurred in connection with the proceedings and plan of reorganization of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, debtor.

By the Commission.

W. P. Bartel,
Secretary.

742 And afterwards, to wit, on the 21st day of October, A. D. 1940, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit: Filed Oct. 21, 1940.

743 IN THE DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois,

Eastern Division.

In Proceedings for the Reorganization of a Railroad.

In the Matter of
Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor. } No. 60463.

HISTORY OF THE PROCEEDING.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the Debtor in this proceeding, is a railroad corporation organized under the laws of the State of Wisconsin and is the successor in interest of Chicago, Milwaukee & St. Paul Railway Company, reorganization of which, pursuant to receivership proceedings, was concluded in 1928. The Debtor filed its petition with this Court on June 29, 1935, stating that it was unable to meet its debts as they matured and that it desired to effect a Plan of Reorganization under Section 77 of the Bankruptcy Act. The Court approved the petition as properly filed and authorized the Debtor to continue in the possession and control of its properties and assets. Thereafter, the Court by order of October 17, 1935, appointed Henry A. Scandrett, Walter J. Cummings and George I. Haight Trustees of the property of the Debtor. Following the ratification of their appointment by the Interstate Commerce Commission and their qualification, the Trustees so appointed took possession of the property and assets of the Debtor on January 1, 1936, and since said time have continued in the possession and control of the same and the operation thereof.

The Debtor filed with its petition a Plan of Reorganization dated July 1, 1935. Said Plan was also filed with the Interstate Commerce Commission and, after due notice, hearings thereon were held by the Commission on August 5-7, 1935, June 16, and September 20, 1937. At the hearings in August, 1935, the Debtor presented certain amendments to its Plan. The Interstate Commerce Commission, on September 24, 1937, entered its order reopening the proceedings for further hearings, which order provided that any Plan to be considered at said hearings should be filed on or before January 10, 1938. On said date a Plan was filed by a group of institutional investors, holders of securities of the Debtor and other corporations involved in these proceedings, in an aggregate amount of $81,731,200. That Plan was amended on January 24, 1938, by a Modified Plan filed by the same group. Certain modifications to that Plan were proposed by the Debtor on February 1, 1938. Pursuant to notice, further hearings began before the Commission, open that Plan and other plans theretofore filed, on the first day of February, 1938, the hearing continuing until February 4, 1938. Hearing was resumed on March 21, 1938, and continued through March 22, 1938, on which date hearings were finally closed. In addition to the Debtor and the Institutional Investors, various parties and intervenors participated in the hearings had before the Commission, including Mortgage Trustees, committees, groups and individuals. The names and interests of those participating are shown in the report of the Commission to which reference is hereinafter made.

744 Briefs were filed by various parties and intervenors. On November 5, 1938, the Commission's Examiner issued a Proposed Report as to a Plan of Reorganization for the Debtor's property. Thereafter, exceptions to the Proposed Report and briefs in support thereof, and later, briefs in reply thereto, were filed by various parties and intervenors. Oral arguments were held before the entire Commission on April 12, 1939.

Subsequent to the hearings and the issuance of the Examiner's Report, a Protective Committee for the Holders of Preferred Stock filed a petition requesting that the proceeding be reopened for the filing of a Plan based upon a proposed consolidation of the Debtor's properties with those of the Chicago and North Western Railway Company. A similar petition was filed in the North Western pro-

ceedings by a Protective Committee for the Holders of Common Stock of that Company. After hearing oral arguments on the questions involved, Division 4 of the Commission denied both petitions on January 19, 1939.

The Commission filed and issued its Report and Order on February 12, 1940, approving a Plan of Reorganization for the Debtor. Thereafter various petitions for modification of the Plan so approved were filed on behalf of numerous parties and intervenors and on June 4, 1940, the Commission filed and issued a Supplemental Report and Order wherein, after consideration of the matters presented in the various petitions for modification of the Plan initially approved, the Commission modified the Plan in certain respects and in its Supplemental Order of June 4, 1940, revoked and superseded the prior Order of February 12, 1940, and set out and approved a Modified Plan of Reorganization of the Debtor, Said Reports and Orders were duly certified to this Court.

On April 26, 1940, the Court made an Order requiring all claims against the Debtor's Estate for the allowance of expenses or compensation for services incurred or rendered up to May 15, 1940, in connection with the Reorganization Proceedings or Plan to be filed on or before May 31, 1940, and directing that notice be given. Notice was given as required in said Order and thereafter various claims were filed and a hearing was had thereon before the Commission's Examiner at Brooklyn, New York, on July 15-19, 1940, and the Commission, on October 2, 1940, made its Report fixing maximum limits for allowances to be made with reference to the claims filed, which Report was duly certified to this Court.

On June 21, 1940, the Court made an Order fixing September 4, 1940, as the date for hearing all objections to the Modified Plan of Reorganization as set out in the Commission's Supplemental Order of June 4, 1940, and all claims for equitable treatment as well as all claims for allowances of expenses or fees incident to the Reorganization Proceedings and the Plan and requiring all objections to said Plan and claims for equitable treatment to be filed on or before the first day of August, 1940, and briefs in support thereof to be filed on or before the 20th day of August, 1940, and directing notice to be given. Notice was given as required by the Order and various objections and claims for equitable treatment, all of which will be hereinafter dealt with, were filed. The hearing upon the

Plan was begun on September 4, 1940, and was concluded on September 13, 1940, on which date the matter was continued until October 21, 1940, for consideration of allowances for fees and expenses, the maximum allowances not having been fixed by the Commission. It was agreed by all parties in interest that the matter of said allowances should be submitted to the Court upon the record made before the Commission's Examiner, without the taking of further testimony.

The Commission having filed its Report fixing maximum limits for allowances as above recited, the said Modi-
745 fied Plan as well as allowances to be made for the period covered by the respective claims thus come before the Court for consideration.

Description of Property.

The Debtor's property embraces a system of railroad extending from Chicago to Seattle, Tacoma and other Puget Sound points with lines extending to Kansas City, Missouri, Omaha, Nebraska, Rapid City, South Dakota, Fargo, North Dakota; Champion and Ontonagon, Michigan, Oglesby, Illinois, Westport, Indiana, and other points. As shown by the 1939 Annual Report to Stockholders, the system includes 9,739.07 miles of solely owned road, 170.91 miles of jointly owned road, 332.68 miles of leased lines and 659.25 miles operated under trackage rights, making a total of 10,901.91 miles of road; also, additional main tracks aggregating 1,224.10 miles and yard tracks and sidings aggregating 4,186.38 miles, making a grand total for all tracks of 16,312.39 miles, together with rolling stock, equipment, terminals and other facilities and properties. The lines east of Mobridge, South Dakota, are commonly referred to as the eastern lines and those west of that point are known as the western lines. These latter lines were opened for through traffic in 1909, and include a small amount of line formerly owned by the Bellingham Bay & British Columbia Railroad Company extending from Bellingham to Glacier, with branches to Lynden and Kulshan, in the State of Washington. The eastern lines include the lines formerly owned by the Milwaukee and Northern Railway Company extending from North Milwaukee, Wisconsin, through Green Bay, Wisconsin, with a branch to Appleton, to Champion and Ontonagon, Michi-

gan, via Channing, and a branch to Menominee, Michigan, referred to in these proceedings as the northern lines. They include also the line formerly owned by the Chicago, Milwaukee & Gary Railway Company extending from Delmar to Joliet, from Aurora to Kirkland, and from Camp Grant to Rockford, all in the State of Illinois, and referred to in these proceedings as the Gary, and the Terre Haute lines, hereinafter described.

The leased lines are owned by Chicago, Terre Haute & Southeastern Railway Company, extend from Chicago Heights, Illinois, to Westport, Sullivan and Oolitic, Indiana, and include the lines formerly owned by the Bedford Belt Railway Company and the Southern Indiana Railway Company. Those lines are collectively referred to in these proceedings as the Terre Haute and are leased to the Debtor for a term of 999 years from July 1, 1921, the rental reserved being a sum equal to the corporate expenses of the lessor, not exceeding $12,000 per year, taxes, sums owing by the lessor under leases and trackage agreements and an amount equal to the interest on the bonds outstanding, or to be issued by the lessor pursuant to the terms of the lease, against the Terre Haute property. The lessee further agreed to assume the payment of the principal of said bonds. The lease contains a provision that at the end of its term, or upon earlier termination, the lessee shall surrender the leased property to the lessor in good order and condition, ordinary wear and tear excepted, with such additions, alterations, betterments, improvements and extensions as shall have been made thereto, free and clear of all liens and encumbrances except those created by the lessor prior to the date of the lease or subsequently thereto pursuant to the provisions thereof, and upon payment by the lessor to the lessee of the then existing fair value of all such additions, alterations, betterments and improvements, including rolling stock and equipment, and extensions, the cost of which shall not be represented by any then outstanding bond or other evidence of indebtedness made or issued by the lessor and secured by a lien upon the leased property, and the
746 entire amount expended by the lessee, but without interest thereon, under the terms of the lease to pay off and discharge the principal of all or any of the bonds of the lessor, or of obligations representing any extension or extensions, renewal or renewals or any refunding or refundings of the whole or any part of said bonds, provided

that the lessor shall not, in so doing, be required to pay any sum in excess of the then existing fair value of the leased property.

According to the Report of the Bureau of Valuation, of the Interstate Commerce Commission, on the elements of value of the system, as of December 31, 1935, the cost of reproduction of the system, exclusive of the Terre Haute, less depreciation, together with the value of lands and rights and the allowance for working capital, was $632,327,582 and the corresponding figure for the Terre Haute was $27,680,114.

Outstanding Obligations.

The existing mortgages constituting liens upon the property of the Debtor are fully set forth in Exhibit No. 73 before the Interstate Commerce Commission but for the purposes of this discussion the following statements will suffice:

The Milwaukee and Northern Railroad Company First Mortgage is a first lien upon the northern lines between North Milwaukee and Green Bay, Wisconsin. There are outstanding under it bonds in the hands of the public in the aggregate principal amount of $2,147,000 and $38,000, principal amount, owned by the Debtor and pledged under the First and Refunding Mortgage of the Debtor.

The Milwaukee and Northern Railroad Company Consolidated Mortgage is a second mortgage upon the same lines upon which the Milwaukee and Northern Railroad Company First Mortgage is a first mortgage and is a first mortgage upon the portion of the northern lines extending from Green Bay, Wisconsin, northward. There are outstanding under it bonds in the hands of the public in the aggregate principal amount of $5,072,000 and $20,000, principal amount, owned by the Debtor and likewise pledged under Debtor's First and Refunding Mortgage.

The Chicago, Milwaukee and Gary Railway Company first Mortgage is a first lien upon the Gary line. There are outstanding under it bonds in the hands of the public in the aggregate principal amount of $3,000,000 and $2,700,000, principal amount, owned by the Debtor and pledged under Debtor's First and Refunding Mortgage.

The Bellingham Bay and British Columbia Railroad Company First Mortgage is a first lien upon the Bellingham Bay and British Columbia Railroad above described

and secures bonds in the aggregate principal amount of $301,000, all of which are owned by the Debtor and pledged as part security for loan from Reconstruction Finance Corporation to the Debtor.

Four mortgages, in addition to the mortgages of the Debtor hereinafter referred to, affect the Terre Haute properties. The Bedford Belt Railway Company First Mortgage is a first lien upon the portion of the Terre Haute lines extending from Bedford to Oolitic, Indiana, a distance of 4.66 miles. Under that mortgage there are outstanding in the hands of the public bonds in the aggregate principal amount of $250,000 and $100,000, principal amount, pledged with the Trustee of Chicago, Terre Haute and Southeastern Railway Company First and Refunding Mortgage. The Southern Indiana Railway Company First Mortgage is a first lien upon the portion of the Terre Haute Lines extending from the Illinois-Indiana State Line, near West Dana, to Belt Junction and from Terre Haute to Westport, together with certain branch lines, and a second lien upon the line covered by the first lien of The Bedford Belt Railway Company. Under 747 that mortgage there are outstanding in the hands of the public bonds in the aggregate principal amount of $7,287,000. The Chicago, Terre Haute and Southeastern Railway Company First and Refunding Mortgage is a first lien upon the portion of the Terre Haute lines extending from Chicago Heights to the Illinois-Indiana State Line, a second lien upon the properties subject to the first lien of the Southern Indiana Railway Company First Mortgage, and a third lien upon the property subject to the first lien of The Bedford Belt Railway Company First Mortgage. There are outstanding under the Chicago, Terre Haute and Southeastern Railway Company First and Refunding Mortgage in the hands of the public bonds in the aggregate principal amount of $8,056,000 and $1,515,000, principal amount, owned by the Debtor and pledged under Debtor's First and Refunding Mortgage, and $2,000, principal amount, held in the treasury of the issuing company. The Chicago, Terre Haute and Southeastern Railway Company Income Mortgage covers the same property as the Chicago, Terre Haute and Southeastern Railway Company First and Refunding Mortgage but is junior to that mortgage and to the Southern Indiana Railway Company First Mortgage and the Bedford Belt Railway Company First Mortgage. There are outstanding under this mortgage

bonds in the hands of the public in the aggregate principal amount of $6,336,000 and $164,000, principal amount, are held in the treasury of the Chicago, Terre Haute & Southeastern Railway Company.

The Chicago, Milwaukee & St. Paul Railway Company General Mortgage was left undisturbed by the reorganization of 1928 and is a first lien upon the eastern lines with the exception of the northern lines, the Gary and the Terre Haute and except also that the status of certain separate lines referred to in the record as seventeen pieces of lines east is in dispute as to whether or not the line of the General Mortgage or of Debtor's First and Refunding Mortgage is prior. There are outstanding under the General Mortgage bonds in the hands of the public in the aggregate principal amount of $138,788,000 and $11,212,000, principal amount, owned by the Debtor and pledged with the Reconstruction Finance Corporation as security for loans to the Debtor.

Subject to the Bellingham Bay and British Columbia Railroad Company First Mortgage, above referred to, the Debtor's First and Refunding Mortgage is a first lien upon the western lines and is also a second lien upon the lines on which the General Mortgage is a first lien and a lien upon the northern lines and the Gary junior to Milwaukee and Northern Railroad Company First Mortgage, Milwaukee and Northern Railroad Company Consolidated Mortgage and Chicago, Milwaukee and Gary Railway Company First Mortgage, and is likewise a lien upon the Terre Haute Lease. There were issued under Debtor's First and Refunding Mortgage bonds in the aggregate principal amount of $9,866,000, all of which are owned by the Debtor and of which $8,665,000, principal amount, are pledged as collateral for a loan to the Debtor from Reconstruction Finance Corporation, $258,000, principal amount, were pledged with the Trustee under Equipment Trust, Series M, and $943,000, principal amount, are held in the treasury of the Trust Estate.

Debtor's Fifty Year Mortgage due February 1, 1975, covers the same property as is covered by the Debtor's First and Refunding Mortgage and is junior in lien to that mortgage. There were issued thereunder bonds in the aggregate principal amount of $106,395,096, all of which are outstanding in the hands of the public with the exception of $426,317, principal amount as of June 30, 1935, held for

issue of securities not yet presented for exchange under the reorganization of 1928.

Debtor's Convertible Adjustment Mortgage covers the same property as is covered by the First and Refunding Mortgage and the Fifty Year Mortgage and is junior as to lien to both of those mortgages. There were issued under Debtor's Convertible Adjustment Mortgage $182,873,693, principal amount, of bonds, of which amount all are outstanding in the hands of the public except $152,487, principal amount, as of June 30, 1935, which are held for exchange for securities not presented under the Plan of Reorganization of 1928.

In addition to the bonds, there were outstanding as shown by the Revised Appendix attached to the Supplemental Report of the Interstate Commerce Commission of June 4, 1940, Equipment Obligations in the principal amount of $33,322,999. This amount as of August 15, 1940, as shown by Exhibit No. 7 introduced at the hearing before this Court, was reduced to $32,654,649.

In addition, loans from the Reconstruction Finance Corporation, as shown in said Appendix, amounted to $12,920,463, which amount the records in this proceeding indicate has been reduced by the amount of $290,000, paid in January, 1940.

In addition, said Appendix shows an outstanding Note of the Trustees to Continental Illinois National Bank and Trust Company of Chicago amounting to $1,184,000. The record does not show the extent to which this has been paid.

Reports of the Master filed and approved by this Court show unsecured claims to date allowed in the total amount of $747,319.89, and claims given priorities amounting to $55,468.39.

In addition, there is outstanding preferred stock of the Debtor in the principal amount of $110,307,300 and 1,174,060 shares of common stock of no par value.

Capitalization and Fixed Charges Approved by Commission.

A tabulated statement, showing the existing obligations and stock of the Debtor and the distribution of new securities under the plan approved and giving a summary of the plan, is attached to the Supplemental Report of the Commission dated June 4, 1940, and is designated as Re-

vised Appendix. A copy thereof is attached hereto, marked "Exhibit A", and made a part hereof. This exhibit does not reflect payments, adjustments and charges made subsequent to its preparation which have been referred to in the foregoing discussion. A correction has been made in the exhibit in order to set out correctly the designation of the last two series of General Mortgage Bonds as "Series E" and "Series F" instead of "Series D" and "Series E" which latter designation was erroneous since there is no "Series D" outstanding. The exhibit likewise does not include obligations represented by guaranties of and assumption of liability with reference to certain terminal and other bonds of companies other than the Debtor. These are referred to in the Commission's Report and discussion concerning them is not essential to a determination of the matter in hand.

After a consideration of the record, which covers over sixteen hundred pages of evidence and includes 219 exhibits, and having before it evidence in respect to all proper elements as to value, valuation reports prepared by the Bureau of Valuation, evidence as to book value, past and present earnings of the property, estimates of future earnings presented by the Debtor and others and various other basic information bearing upon the question of future earnings, the Commission states that, considering the past and prospective earnings of the Debtor and all other relevant facts and the public interest, it is of the opinion and finds that the total capitalization of the 749 new Company should not exceed approximately $108,780,470 of fixed interest debt, $115,257,480 of contingent interest debt, $111,347,846 of preferred stock, par value $100, and 2,131,475¼ shares of common stock having no par value. The maximum capitalization so fixed by the Commission was arrived at by including $15,350,300, principal amount, of Terre Haute bonds, being the portion representing fixed interest as treated under the Plan, and $6,578,700, principal amount, of Terre Haute bonds, being the portion representing contingent interest as treated under the Plan. Taking the common stock at $100 per share, the total maximum capitalization approved by the Commission is $548,533,321. The total fixed interest debt requires an annual charge of $4,269,654. The Plan provides a mandatory Additions and Betterments Fund in an annual amount of $2,500,000, cumulative for one year. Annual contingent interest charges amount to $5,219,480. The annual

sinking fund requirement is approximately $543,394. The total charges ahead of dividends under the Plan amount to $12,532,528 and an additional discretionary Additions and Betterments Fund is to be provided out of available net income remaining after the payment in full of contingent interest on the General Mortgage Series "A" bonds of the new Company and the contingent interest on the Terre Haute bonds, it being provided that the total amount so set aside for an income period shall not exceed $5,000,000 or 4% of railway operating revenues, whichever amount is greater, less any amount applied out of the Reserve and Retirement Fund for the income period for capital expenditures other than payments of equipment obligations and payments on account of new equipment. If the maximum discretionary Additions and Betterments Fund is provided, there would be an additional $2,500,000 ahead of dividends.

Those Supporting and Objecting to Plan.

The Plan so approved by the Commission is supported by the Group of Institutional Investors, the Mutual Savings Bank Group, the Reconstruction Finance Corporation and the Trustee under the Milwaukee and Northern Railroad Company mortgages upon the terms stated at the hearings. Counsel for the Trustees also stated that, with certain corrections which could be made within the framework of the Plan, the Trustees felt that the Plan, in the light of their knowledge of and experience in the operation of the property, was feasible.

Objections to the Plan were filed by the Debtor, the Protective Committee for Preferred Stockholders, the Trustee under the General Mortgage, the Trustees of Princeton University and other holders of General Mortgage bonds, the Trustees under the Fifty Year Mortgage and the Protective Committee for holders of Fifty Year Mortgage bonds, the Trustees under Debtor's Convertible Adjustment Mortgage, Israel Abrams and others, holders of Adjustment Mortgage bonds, the Independent Committee for the Protection of Bondholders, Imperial Trust Company and others, holders of Milwaukee and Northern Consolidated Mortgage bonds, Anglo-Continentale Treuhand, A. G., holders of Milwaukee and Northern First Mortgage and Consolidated Mortgage bonds, Trustees under the Gary Mortgage and by various Terre Haute

interests, including the Chicago, Terre Haute & Southeastern Railway Company, a Committee for the Protection of Holders of Terre Haute bonds, Terre Haute Income Mortgage Bondholders' Committee, Massachusetts Mutual Life Insurance Company and other holders of Terre Haute bonds, Union Labor Life Insurance Company, also a holder of Terre Haute bonds, and the Trustees under the several Terre Haute mortgages.

Objections requesting certain changes in the Plan
750 with reference to certain claims were filed by the Pennsylvania Railroad Company and the New York Central Railroad Company and an objection was also filed on behalf of Ida E. Herschensohn and Herbert L. Herschensohn requesting preferred treatment for personal injury claims. Full hearing, both orally and by brief, was granted to all objectors. The questions raised by the objections, insofar as necessary for a determination of the matter under consideration, will be considered in the discussion which follows.

Function of Commission and Court.

Sub-section (b) of Section 77 provides:

"(b) A plan of reorganization within the meaning of this Section (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; (2) may include provisions modifying or altering the rights of stockholders generally, or of any class of them, either through the issuance of new securities of any character, or otherwise; (3) may include, for the purpose of preserving such interests of creditors and stockholders as are not otherwise provided for, provisions for the issuance to any such creditor or stockholder of options or warrants to receive, or to subscribe for, securities of the reorganized company in such amounts and upon such terms and conditions as may be set forth in the plan; (4) shall provide for fixed charges (including fixed interest on funded debt, interest on unfunded debt, amortization of discount on funded debt, and rent for leased railroads) in such an amount that, after due consideration of the probable prospective earnings of the property in light of its earnings experience and all other relevant facts, there shall be adequate coverage of such

fixed charges by the probable earnings available for the payment thereof; (5) shall provide adequate means for the execution of the plan, which may include the transfer of any interest in or control of all or any part of the property of the debtor to another corporation or corporations, the merger or consolidation of the debtor with another corporation or corporations, the retention of all or any part of the property by the debtor, the sale of all or any part of the property of the debtor either subject to or free from any lien at not less than a fair upset price, the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein, the satisfaction or modification of any liens, indentures, or other similar interests, the curing or waiver of defaults, the extension of maturity dates of outstanding securities, the reduction in principal and/or rate of interest and alteration of other terms of such securities, the amendment of the charter of the debtor, and/or the issuance of securities of either the debtor or any such other corporation or corporations for cash, or in exchange for existing securities, or in satisfaction of claims or rights or for other appropriate purposes; and may deal with all or any part of the property of the debtor; may reject contracts of the debtor which are executory in whole or in part, including unexpired leases; and may include any other appropriate provisions not inconsistent with this section."

After a plan is approved and certified by the Commission to the Court and a hearing had thereon, as provided in the Statute, the following provision in sub-section (e) of Section 77 states the prerequisites to approval by the Court:

"'After such hearing and without any hearing if no objections are filed, the judge shall approve the plan if satisfied that: (1) It complies with the provisions of sub-section (b) of this section, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders; (2) the approxi-

mate amounts to be paid by the debtor, or by any corporation or corporations acquiring the debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed so far as they can be ascertained at the date of such hearing, are reasonable, are within such maximum limits as are fixed by the Commission, and are within such maxi-
751 mum limits to be subject to the approval of the judge; (3) the plan provides for the payment of all costs of administration and all other allowances made or to be made by the judge, except that allowances provided for in subsection (c), paragraph (12) of this section, may be paid in securities provided for in the plan if those entitled thereto will accept such payment, and the judge is hereby given power to approve the same."

It is apparent that it was intended by the law that the Bankruptcy Court and the Interstate Commerce Commission should cooperate to the end that a fair and equitable Plan of Reorganization might be provided. Such purpose has been declared in a recent decision of the Supreme Court of the United States in *Warren* v. *Palmer*, 84 L. Ed. 752; 310 U. S. 132.

That Court has not yet determined just what weight should be given by the Court to the findings and conclusions of the Commission. Clearly, the Court has power to correct errors of law into which the Commission may have fallen and to set aside findings of fact which are not supported by the record or conclusions which violate constitutional rights. On the other hand, the initial determination of the questions bearing upon the soundness and reasonableness of a Plan of Reorganization is the responsibility of the Commission which is peculiarly fitted for the consideration of such questions and its findings and conclusions, made and reached after extended hearings and exhaustive study, as in this case, should be given great weight.

In these cases, the amount and character of the capitalization of the reorganized company, the fixed charges, and the distribution of new securities are all questions of prime importance, and their determination affects the public interest.

With these principles in mind, let us consider the objections which have been presented to this Plan.

Objections of Debtor.

The Debtor objects, first of all, to the effective date of the Plan, claiming that under the law the effective date must be the date when these proceedings were initiated and that interest accruing since that date should not be added in determining the amounts of claims of any creditors. The plan, for the purpose of treatment, includes interest to the effective date, January 1, 1939, in the case of all mortgage claimants except the holders of Adjustment Mortgage bonds as to whom interest is included to June 29, 1935.

There has been a recent change of Counsel for the Debtor, but it should be noted that the Debtor, in its proposed modifications of the Plan of the Institutional Group, approved January 1, 1939, as the effective date. The practice followed by the Commission in this case is similar to that followed in other reorganization cases which have come before it and it would seem that to date back the Plan in the manner suggested would require a disregard by the Commission of the factual situation existing at the time the provisions of the Plan were determined upon.

Not only is there no requirement in Section 77 that the effective date be coincident with the date of filing of the petition, but sub-section (e) permits the inference that it was contemplated that the effective date should be the date to which the findings of the Commission relate. That sub-section, in dealing with the exclusion of stockholders, states, as one of the prerequisites for such exclusion, that the Commission shall have found, and the Judge shall have affirmed the finding, that at the time of the finding, the equity of the stockholders has no value.

Moreover, such proposed relation back and the consequent disallowance of interest are contrary to the uniform rule applying in insolvency proceedings generally that,
752 in the case of secured creditors, unpaid interest accruing during the proceedings must be included in the claim.

Ticonic National Bank v. *Sprague*, 303 U. S. 406.
In Re Barclay Park Corporation, 90 Fed. (2nd) 595.
Coder v. *Arts*, 213 U. S. 223.

The principle was approved by Judge Woodward in the proceeding under Section 77 of the *Chicago Great West-*

ern Railroad Company, 29 Fed. Supp. 149, 161, and by Judge Barnes in the recent proceedings of Chicago and North Western Railway Company.

The Commission, in fixing the effective date and in the treatment of interest accruals, it is believed proceeded in the manner contemplated by the Act and in accordance with the law applicable in such proceedings.

The Debtor further contends that the Plan is unfair and invalid because of its failure to give recognition to the stockholders. In this contention the Debtor is supported by the Committee for the Preferred Stockholders. It is contended that in order to determine whether or not there is an equity for the stockholders, there must be a valuation of the property and it is claimed that there has been no such valuation.

It should be noted that valuation is not made mandatory by the statute. Sub-section (e) requires the Commission to determine value if it shall be necessary. Notwithstanding the fact that this proceeding has been pending for several years, and there have been various hearings before the Commission and the several parties and intervenors have been represented by Counsel eminent in practice of this character, no one appears to have suggested that any specific finding of value should be made or that any elements affecting value, other than those produced, should be considered by the Commission.

Moreover, the Commission has in its reports made all findings as to value which would appear to be necessary for the purposes of this proceeding. In the first place, it has fixed a maximum permissible capitalization of $548,533,321 as contrasted with an existing debt, inclusive of interest to January 1, 1939, in excess of $626,000,000. The fixing of this maximum capitalization necessarily involves a conclusion by the Commission that there is no equity for the stockholders. In addition to this, the Commission makes the following specific finding:

> "There is no evidence whatever to indicate that a recovery of the earning power of 1928-1929 is reasonably probable, and we regard it as a remote possibility only which may not be utilized to support a finding that the Debtor's stockholders have an equity. In view of the earnings situation it would be improper to give controlling weight to the fact that the indicated reproduction cost value of the property exceeds the amount of the debt. We find that the equity of the

holders of the Debtor's preferred stock and its common stock has no value, and the holders of claims in classes 24 and 25, therefore, are not entitled to participate in this plan."

Counsel seem to labor under the impression that value for the purpose of these proceedings means only physical value as represented by original cost or reproduction cost with proper adjustment for depreciation, additions and betterments. Such elements were, of course, considered by the Commission as shown by its report but those elements are not to be exclusively considered and the value with which we are concerned is not merely physical value or value for rate making purposes, but value in terms of furnishing support for a sound and workable financial structure. But in whatever sense the term value is employed, there is adequate evidence in this record to show that thorough consideration was given to all elements of value and that the conclusion of the Commission was reached in the light of such consideration.

Contrary to the contention of the Debtor, the Com-
753 mission was charged with the duty, not only of determining the amount of fixed interest debt of the new Company, but also the contingent interest debt and it was in the public interest that the contingent interest debt be such that, as stated by the Commission, the total debt should bear a proper relation to the total capitalization and such as to make the payment of contingent interest a probability and of dividends a reasonable prospect, at least on the preferred stock.

The record shows that no dividends have been paid upon the stock of the Debtor or its predecessor since 1917. Even in the ten-year period ending with 1930, which included the peak years of 1928 and 1929, income available for interest fell far short of the amount needed to service the funded debt which was less than on January 1, 1939, the effective date of the Plan. This condition has been brought about not entirely by the financial depression but has been contributed to by many factors such as increased costs, taxes, wages, competition in other forms of transportation and the like. In no year since 1930 has the income available for interest been equal to the amount required under the proposed Plan to meet charges ahead of dividends.

The objectors do not dispute any of the facts embodied in the elements considered by the Commission in reaching

its conclusions but the contention is made that the outlook for the future is bright and the prospect for increased earnings promising and this situation, it is claimed, justifies a finding of some value for the equity owners. An expert was called who voiced this view and expressed at some length his opinion as to future earnings. That witness expressed the view that the Debtor's properties were efficiently operated and were in good physical condition and that he felt, in the light of the present tendencies, that it was not too much to expect that a time might be reached, some time in the future, when the railroad might earn a sufficient amount to have available for the payment of interest $20,300,000. That time was referred to as the future normal year but the witness was unwilling even to venture a guess when such time might arrive. Moreover, if such an amount were earned and available for the payment of interest, the capitalization of this amount at four per cent would produce slightly over $500,000,000 which is a less amount than the permissible capitalization fixed by the Commission. Under the Plan approved by the Commission, if $20,300,000 were available for the payment of interest, there would only be enough to pay dividends on the new preferred stock and none on the new common, assuming the additional amount for additions and betterments contemplated by the Plan were authorized by the Board of Directors, and the preferred stock under the Plan represents the interest of present bondholders. If applied to the existing indebtedness, including unpaid accrued interest to January 1, 1939, such an amount would fall short by some $9,000,000 of paying interest at the average existing rate carried by the obligations of the Debtor.

The Debtor also appears to agree with the view expressed by the Trustee under the General Mortgage that the provision for the mandatory Additions and Betterments Fund of $2,500,000 should be eliminated. This question will be more fully discussed in connection with the objections of the General Mortgage Trustee but it is noted that earlier in the proceedings the Debtor was a strong advocate for an adequate Additions and Betterments Fund, insisting that it should be maintained at a minimum of $5,000,000 with a mandatory annual payment of $2,500,000 and an additional discretionary payment sufficient to bring the total up to $5,000,000 or 4% of total revenues.

The Debtor has filed, since the close of the hearing before the Court, a so-called closing argument in which there

is set forth what amounts to a proposed Plan of Reorganization. At the time of the hearing before the Court, 754 Counsel for the Debtor offered in evidence what was referred to as an outline of a proposed capitalization, but upon objection it was excluded. It does not appear whether or not the proposed Plan is the same as the material submitted at the hearing, but, in any event, no such Plan was submitted to the Commission, and, of course, is not before the Court for consideration. Insofar as it may be used as argument on behalf of the Debtor's position, it appears to add nothing new to the argument heretofore analyzed.

The Commission points out that the fixed interest charges under the capitalization provided in the Plan, amounting to $4,269,654, together with the mandatory Additions and Betterments Fund of $2,500,000, making a total of $6,769,654, would be covered about 1.16 times by the average earnings of the period from 1931 to 1935 and 1.18 times for the period from 1932 to 1936. It is pointed out that in the years 1932, 1935 and 1938 such an amount was not earned and the Commission concludes that "between the clear demands of a conservative policy in the present reorganization and the claims and rights of first lien bondholders, we conclude that the limitation of fixed charges of the system at approximately $4,269,654 a year is reasonable and proper."

The Court feels that the Commission, in determining the maximum permissible capitalization and fixed charges which the Debtor could reasonably be expected to meet, and in concluding that the present stocks of the Debtor are without value, gave adequate consideration to all elements which should be considered in determining such questions and that the Commission's conclusions as to those matters are sound. The same should be said as to the effective date and the inclusion, in the case of fixed interest bonds, of interest accruing up to that date.

Having considered the matter of capitalization and fixed charges, the remaining questions relate in the main to distribution. All agree that the equipment obligations of the Debtor should remain undisturbed and be assumed by the new Company. As to the loans from the Reconstruction Finance Corporation, it is not questioned that the value of the assets pledged to secure these loans far exceeds the amount due and, the loans being fully secured, no one objects to the treatment accorded these obligations, namely:

the issuance of First Mortgage Bonds for one hundred per cent of the balance due after applying in reduction of the loans the cash on deposit in the hands of the Trustees under Debtor's First and Refunding Mortgage bonds which are pledged to secure the loans.

The Terre Haute Objections.

Of prime importance in considering the fixed and contingent obligations of the new Company is the question presented by the Terre Haute. The Terre Haute lines have already been described. As shown by the Report, the reproduction value less depreciation was $20,680,114 as of December 31, 1935. The bonds outstanding in the hands of the public against the properties aggregate $21,929,000, principal amount, exclusive of $1,515,000, principal amount, owned by the Debtor. Under the lease, to which reference has already been made, the Debtor, by way of rental, is required to pay interest on the Terre Haute bonds representing an annual amount of $1,023,580. The obligation to pay interest, so far as the Income Bonds of the Terre Haute are concerned, is represented by an endorsement upon the bonds which endorsement, however, specifically refers to the lease and makes it clear that the interest so paid represents a portion of the rental. The obligation to pay interest on the bonds other than the Income Bonds is found in the lease itself. In addition, the lease provides that the Debtor shall pay the principal of the Terre Haute bonds, but attention has already been called to the provision 755 that, at the end of the term, the lessor, in order to repossess itself of the leased property, is required to repay the principal sums so paid by the lessee. The stock of the Terre Haute consists of 41,729.95 shares of which the Debtor owns 40,470.95 shares, or approximately 97%. It is apparent that the interest of the Terre Haute, as such, is essentially a bondholders' interest. If the principal and interest of the Terre Haute bonds are paid, then the interest of that Company terminates.

The Terre Haute is not in bankruptcy and the Commission concluded that its financial structure and the rights of its creditors were not subject to the Commission's jurisdiction and that the Terre Haute bondholders were not such creditors of the Debtor as to be bound by a confirmed Plan of Reorganization which divested them of their existing liens upon the Terre Haute properties. The Commis-

sion recognized that it was desirable that the operation of the Terre Haute properties by the Debtor continue but concluded that, in view of the maximum limits set forth in the Plan as to capitalization and fixed charges, it was necessary to make certain modifications in the Terre Haute lease and the obligations of the Debtor thereunder. The Plan provides that there shall be submitted to the Terre Haute bondholders certain provisions which include a proposal to extend their bonds, waive equipment vacancies and reduce the rate of interest on all of their issues, except the Southern Indiana Railway Company First Mortgage bonds, from 5% to 4½%, the interest on the Southern Indiana bonds to be increased from 4% to 4½%, all interest to be fixed to the extent of 2.75% and contingent upon system earnings as to 1.5%. A new lease is proposed embodying these modifications. The Plan provides that if these provisions are not accepted by substantially all of the Terre Haute bondholders, the existing lease shall be rejected as of the date of the determination by the Court that the provisions have not been accepted, without prejudice to either the negotiation of a new lease or a consolidation of the Terre Haute properties with those of the new company on terms subject to the Commission's approval. The Plan contemplates that the claim for damages resulting from the rejection of the lease shall constitute an unsecured claim against the Debtor to be satisfied under the Plan by the issuance of common stock in accordance with the Plan.

The Terre Haute lease was made in 1921. The principal advantage to the Debtor resulted from the fact that it made available to the Debtor a coal supply for a large portion of its eastern lines. The exhibits introduced in evidence before the Commission and before the Court, showing an allocation of earnings to the Terre Haute lines upon the basis followed by the accountants in the preparation of the exhibits, disclose that the earnings so allocated to these lines are, and for some years have been, substantially in excess of the rental required to be paid in the form of interest on the outstanding bonds. This is true whether the exhibits are made up upon the basis of allowing tariff rates or out-of-pocket costs for the hauling of Company coal, though, of course, the use of tariff rates shows substantially greater earnings.

The Terre Haute interests contend that the Plan is inequitable and unfair because the relationship between the Debtor and the Terre Haute is an arms-length relation-

ship of lessor and lessee, the lease is profitable to the lessor and there is no reason for requiring the Terre Haute to make any sacrifice for the purpose of helping out the deficiency in earnings of the Debtor. It should be stated that their principal objection is to any reduction or modification in the interest rate. No serious objection was voiced to the extension of bonds or to the waiver of equipment deficiencies. As to the latter, their position is easily understandable in the light of the fact that the equity in the property is owned by the Debtor and there is little
756 probability of its return to the lessor at the end of the period.

They also question the right of the Commission or the Court to provide in the Plan for the disaffirmance of a profitable lease, the contention being that the right to disaffirm runs only to those obligations which constitute a burden upon the Debtor.

It is further contended that if said provisions are not accepted by the Terre Haute interests, and it is asserted by them that they will not be accepted, and the lease is disaffirmed, then the disaffirmance will relate to the time of the filing of the petition in these proceedings and the Trustees will be required to account for the earnings since said date which they assert would amount to several million dollars for which no provision is made in the Plan.

Finally they claim that the Terre Haute bondholders will become creditors if the lease is disaffirmed and as such will be entitled to participate in the voting upon the plan, and that it follows that, if the lease is to be rejected, definite decision to that effect must be made prior to the referendum upon the plan for, otherwise, those injured by the rejection will be deprived of the right to vote their resulting claims upon the question of acceptance or rejection of the Plan, thereby rendering the vote invalid.

It should be stated that the Terre Haute situation presents a troublesome question but, after all, the Commission and the Court are faced with the duty of passing upon the reasonableness and fairness of a Plan from the standpoint of all parties in interest and the public, and while they may not have jurisdiction to deal directly with the interests of the Terre Haute bondholders, they do have not only the right, but the duty, in the formulation of such plan, to deal with the property of the Debtor, including its rights as lessee, or otherwise.

The evidence introduced shows that the value of the

Terre Haute lease to the Debtor results in the main from two things. First, the provision of an available coal supply, already referred to, and, second, the fact that the demand for a large supply of railroad coal from mines located upon the Terre Haute lines makes it possible to keep those mines open and enables them to produce coal to be marketed commercially, thus providing substantial tonnage moving over Debtor lines to Chicago and points north. Revenue from such tonnage and the allowance made in the computations of earnings for the transportation of Company coal constitute the bulk of the earnings shown for the Terre Haute lines. There is also a substantial amount derived from the longer haul by the Debtor of property moving to and from eastern lines by reason of the fact that the points of interchange under Debtor operation can be located upon the Terre Haute line east of Chicago thus increasing the haul of the Debtor lines. This item of revenue results wholly from the fact that the Terre Haute is operated by the Debtor and the other two items, which are the big items, likewise result from the fact that the rest of the Debtor system is maintained as a going railroad using coal obtained on the Terre Haute line and transporting from those mines, which it helps to keep open, commercial coal to various points on its eastern lines. The accounting methods used in allocating earnings to the Terre Haute do not reflect or attempt to measure the contribution of the rest of the Debtor system to the Terre Haute properties.

The report of the Commission, referred to at the hearing, in *Investigation of Chicago, Milwaukee & St. Paul Railway Company*, 131 I. C. C. 615, points out that prior to the operation of the Terre Haute properties by the Debtor, or its predecessor, the Terre Haute was not earning its interest on its Income Bonds and its property is referred to in that report as a distress property. It is claimed that
the rapid increase in the use of diesel power will ma-
757 terially decrease the earnings of the Terre Haute in
the future in that the amount of coal used in the operation of the Debtor will be greatly reduced. Some evidence was introduced directed to this point. There was also evidence indicating additional switching charges in a substantial amount would result if the Terre Haute property were operated independently from the Debtor property. It is clear from the record that from the standpoint of the Terre Haute, some arrangement for its operation by the Debtor is extremely desirable.

With a limitation upon the fixed interest debt as set forth in the Plan, the Commission found that, after making provision for the equipment obligations and the Reconstruction Finance Corporation loans and providing for the Milwaukee and Northern bonds, as to none of which is it contended that too favorable treatment is given, the amount of fixed interest obligations remaining for distribution was such that if the Terre Haute bonds were left wholly undisturbed, they would constitute 27% of the total amount of new fixed interest debt, exclusive of equipment obligations, and there would not be left for General Mortgage bondholders fixed interest bonds in more than double the amount of the existing Terre Haute bonds, whereas, the mileage represented by the General Mortgage is eighteen times that of the Terre Haute and the valuation, seventeen times. When this is considered in the light of the fact that the profitable character of the Terre Haute is dependent upon the continued operation of the rest of the system, it would seem neither to be unfair nor unreasonable nor inequitable that the Terre Haute bondholders be requested to make some sacrifice in order to maintain the continued operation of both properties upon a basis reasonably assured by prospective earnings. All interests seem to feel there is reasonable prospect that the new Company will earn both the fixed and contingent charges as provided in the Plan. If that happens, then the making of 1.5% of interest contingent upon earnings to the same extent, as provided with regard to the payment of interest on General Mortgage, Series "A" bonds, will not represent a sacrifice except to the extent of ¾ths of 1% in the case of the Bedford Belt Railway Company and the Chicago, Terre Haute & Southeastern Railway Company bonds. This sacrifice does not seem to be an unreasonable or inequitable one in the light of the advantage to be obtained from having the entire system placed upon a financial structure which can be adequately supported. The Commission had only so much cloth with which to make a suit. It would hardly have been justified in using so much of the material to make the vest that enough would not be left to provide a coat and trousers.

The Terre Haute interests have suggested that the proposal of the Plan is in the nature of a threat. This hardly seems fair to the Commission which has frankly and fully stated the facts making it necessary to follow the course which was followed in preparing the Plan. The Commis-

sion was faced with a difficult problem. It adopted this course, as stated in its Supplemental Report, as a "necessary step in order that the processes of the reorganization of the Milwaukee may not be thwarted".

The objectors rely strongly upon the showing made as to the profitable character of the Terre Haute lease. This showing, however, is entirely one of operating results based upon certain accounting methods. The report indicates that the Commission felt that in determining whether or not the lease was profitable, consideration must be given to factors other than current operating results. Many such factors are present in this case. For example, the early maturity of the Terre Haute bonds, the substantial equipment vacancies, the possibility of exhaustion of the available coal supply, the possible substitution of diesel power and other considerations which are important in determining the real character of the lease. From
758 still another point of view, a lease shown to be profitable under the method of accounting followed might in fact constitute a burden upon the lessee. Suppose, for example, the result of the operation of the Milwaukee System were such that the total amount earned and available for payment of Terre Haute rental and interest on its own obligations was only $1,000,000 per annum which is less than the rental provided under the Terre Haute lease. To require the continuance of this lease would mean that the entire Milwaukee System of 11,000 miles would have to be operated for the sole purpose of paying rent on less than 400 miles of line. This thought is well expressed in the Commission's report. In any event, Section 77 provides, without any qualification, the Plans of Reorganization may provide for the rejection of unexpired leases and executory contracts.

The objectors call attention to the rule prevailing in equity receiverships that a receiver is allowed a period within which to determine whether or not he shall affirm or disaffirm existing leases and that his action relates back to the date of the institution of the proceedings. Reliance is placed upon *American Brake Shoe & Foundry Company* v. *New York Railways*, 282 Fed. 523, and other similar cases and upon the case of *Palmer* v. *Palmer*, 104 Fed. (2nd) 161, which arose out of the New Haven reorganization. Examination of the authorities discloses that this rule is one designed for the protection of the receiver or the trustee. It is based on the theory that it is proper that

he should have a reasonable time in which to elect to affirm or disaffirm and if he does elect to disaffirm, he should not be required to pay the rental fixed to the date of disaffirmance. As a rule, the leases which are disaffirmed are those which are unprofitable and the cases in which the principle is announced are cases in which the earnings were less than the rental provided. The authorities seem to recognize that in a given situation there may be special equities which will afford a basis for a different result. This suggestion is made in *Pennsylvania Steel Company* v. *New York City Railway Company*, 198 Fed. 721, and *Pennsylvania Steel Company* v. *New York City Railway Company*, 225 Fed. 734, and the principle is approved in the *Westinghouse Case* relied upon by the objectors.

Sub-division (b) of Section 77 provides that the Plan of Reorganization may reject unexpired leases and further provides that the adoption of an unexpired lease by the Trustees of the Debtor shall not preclude a rejection of such lease in the Plan. Sub-division (c) (6) of Section 77 provides that after a lease is rejected and if the lessee, with the approval of the Judge, shall elect no longer to operate the leased line, it shall be the duty of the lessor, at the end of a period to be fixed by the judge, to begin the operation of such line unless the Judge upon the petition of the lessor, shall decree, after hearing, that it would be impracticable and contrary to the public interest for the lessor to operate the said line, in which event it shall be the duty of the lessee to continue operation on or for the account of the lessor until the abandonment of such line is authorized. The first of these provisions clearly distinguishes between the right of the Trustees to disaffirm and the right to disaffirm in the Plan itself.

In this case, no action has been taken by the Trustees to disaffirm the Terre Haute lease and the alternative of disaffirmance, if carried out, will be a disaffirmance by the Plan itself as distinguished from disaffirmance by the Trustees. The record in this proceeding shows that early in the reorganization the Trustees made application to the Court for authority to pay rental obligations arising under the Terre Haute lease and the Court made an order authorizing the payment of interest due, or to become due, upon the Terre Haute bonds, which interest, as previously pointed out, the Debtor is required to pay by way of rental. That order, made in 1935, has not been modi-
759 fied and pursuant to it the Trustees have paid the

interest on the Terre Haute obligations as it came due. Such interest, constituting rental, has been paid to the holders of the bonds and the bondholders have accepted it. They cannot demand more and they are the real parties in interest on the Terre Haute side. The parties, therefore, have carried on under the lease in the same manner as prior to the bankruptcy proceedings. It would be unreasonable to require the lessee, who has paid the stipulated rental to third parties pursuant to Court order, to account for a further sum for the same period covered by the rental so paid. It would seem in accordance with equitable principles to treat the transaction as closed up to the point to which rental is paid and accepted.

In this case the Plan provides that if the lease is disaffirmed, the disaffirmance shall be effective from the date when the Court finds that the Terre Haute bondholders have disapproved the provisions to be submitted to them. The result is that if the Plan is approved and there is disaffirmance, it must be effective as of that date unless the Court concludes that such provision of the Plan is contrary to law. The objection, therefore, goes to the power of the Commission and Court to make this provision in the Plan.

In the light of the authorities and the facts above recited, the Court feels that it is clearly within the power of the Commission and the Court to so fix the effective date of disaffirmance. Furthermore, it would seem that the circumstances here present a case where the equities are such that the disaffirmance provided in the Plan should not relate back to the beginning of these proceedings even if the Plan itself had not expressly provided that the disaffirmance should become effective as of the date of the Court's finding that the Terre Haute bondholders disapproved the provisions submitted to them.

The contention, that if the Terre Haute lease is to be rejected a definite decision to that effect must be made prior to the submission of the Plan to the Debtor's creditors, does not seem to be supported by a proper interpretation of the statute. It is true that sub-division (b) of Section 77 provides that the term "creditors" shall include the holder of an unexpired lease. This same sub-division amplifies that definition by explaining that in the case of an unexpired lease, which is rejected by a Trustee or by any Plan, any person injured by such rejection shall be deemed to be a creditor of the Debtor to the extent of ac-

tual damage or injury determined in accordance with principles obtaining in equity proceedings. Sub-division (e) provides for the submission of a Plan to the creditors. The provision in that regard is that the Plan, after it is approved by the Commission and by the Court, shall be submitted by the Commission to the creditors whose claims have been filed and allowed. If the rejection is accomplished by the Plan itself, then it is not complete until the Plan has been confirmed, which confirmation takes place after submission to the creditors. Obviously then, at the time of submission to creditors, no rejection has been accomplished, and the lessor could not possibly be in the position of the holder of an allowed claim.

The situation in this case is no different from that in any other case where a lease is rejected by the Plan itself and the argument presented by the objectors would lead to the conclusion that a lease could never be rejected by the Plan since under their argument the rejection would have to take place before submission which is an impossibility since the rejection is accomplished by the confirmation of the Plan which follows submission. The statute must be construed, if possible, to give effect to all of its provisions and the provisions requiring submission to creditors must contemplate submission to those creditors who occupy that status at the time of submission.

760 The statute does not require re-submission after the confirmation of the Plan to a lessor under a lease which the Plan provides shall be disaffirmed. Such a requirement would necessitate two submissions which is clearly not contemplated by the statute. There is nothing in the alternative character of the provision in this Plan to differentiate it from the ordinary case of a rejection provided in the Plan itself. There will be an alternative in the Plan when it is submitted. The creditors of the Debtor will be in the same position to consider the Plan with the alternative in it as is the Court. No creditor of the Debtor has made any objection to the presence of this alternative. When the provisions upon which the Terre Haute bondholders are requested to act are submitted, the same alternative will be before them and they have it within their power to determine which alternative shall be adopted.

If the Terre Haute bondholders reject the provisions affecting them, it does not mean that the operation of the Terre Haute will cease. Attention has already been called to subdivision (c) (6) of Section 77 providing for continued

operation either by the lessor or the lessee depending upon the finding of the Court. Sub-division (c) (10) of Section 77 likewise provides, in the case of leased lines, that the Court may refer to the Commission for its recommendations as to the method or formula by which the segregation or allocation of earnings and expenses may be made, which method or formula would apply in determining the earnings allocable to the Terre Haute during the period of operation for the lessor's account.

The Court feels that the Commission, in dealing with the Terre Haute interests, handled a difficult situation in a very creditable manner and evolved a Plan which is fair and equitable, all things considered.

Milwaukee and Northern Bonds.

The bonds of the Milwaukee and Northern Railroad Company are next in order in discussing the matter of distribution. Two issues of bonds are involved. The First Mortgage bonds, which are a first lien upon the northern lines south of Green Bay, and the Consolidated Mortgage bonds, which are a first lien upon the northern lines north of Green Bay. Counsel for the Trustee under both mortgages participated in the hearing and in argument frankly advised the Court that he did not feel it would be safe to increase very much the amount of fixed interest bonds and contingent interest bonds that the new Company should carry. He further stated that in the light of the earnings showing in recent years, evidence as to which was introduced at the hearing, it was concluded that it would not be advantageous to these two groups of bondholders to seek to get back the property and operate it for their own account and that it was better for them to take the provisions finally made in the Commission's Plan than to undertake to fight for a better provision. The evidence referred to indicates that the northern lines as a whole during the years 1937, 1938 and 1939 operated at a deficit but the portion south of Green Bay, under the method of allocation used, earned in excess of interest requirements. In fact, interest was paid up to the last interest date prior to the time that the Commission's Plan was announced.

Objection is voiced to the Plan by two groups representing holders of Milwaukee and Northern bonds. The group most active at the hearing was represented by Anglo-

Continentale Treuhand, A. G. It is the contention of that group that, taking into consideration the valuation of the northern lines and the earnings, better treatment should be accorded them. The group represented only $1,000, principal amount, of First Mortgage bonds.

761 The Commission, recognizing the earnings showing of the First Mortgage line, accorded to the First Mortgage bonds of the Milwaukee and Northern superior treatment, so far as the distribution of bonds of the new Company is concerned, to that received by any other creditor with the exception of the Reconstruction Finance Corporation and allotted to said First Mortgage bonds 70% of the outstanding principal and interest in new First Mortgage System bonds. For the remaining 30%, there were allotted Series "A" General Mortgage bonds. The Consolidated Mortgage bonds were given the same treatment as the General Mortgage bonds next discussed. Those who object on behalf of the General Mortgage bonds state that they have no objection to the treatment received by the bonds of the Milwaukee and Northern. It appears that in the light of the facts disclosed by the record and with the limited capitalization and fixed interest charges necessarily imposed by the Plan, the treatment received by these securities was all that they could reasonably expect and was, under the circumstances, fair and equitable.

General Mortgage Bonds.

Next in order are the General Mortgage bonds. Objection to the Plan is made by the Trustee under the General Mortgage and by a group of General Mortgage bondholders headed by Princeton University. They claim that the Plan from their point of view is not fair and equitable and urge that their mortgage constitutes a first lien upon the so-called heart of the system and that allotting to them only 25% of their holdings in new First Mortgage bonds violates the principle of absolute priority which they assert is required under the rule of *Northern Pacific* v. *Boyd*, 228 U. S. 482, and *Case* v. *Los Angeles Lumber Products Company*, 308 U. S. 106. They further urge that they should be relieved of the burden of the unprofitable western lines; that the Commission had no jurisdiction to impose a mandatory Additions and Betterments Fund to be paid out of earnings and urge that if this provision be eliminated, they should receive 67% of their present hold-

ings in First Mortgage bonds. Finally they urge that the securities to be received by them under the Plan will be diluted by giving to junior lien holders some securities of equal rank.

The attitude of this group toward the Terre Haute is interesting. They claim that the Terre Haute lease should be disaffirmed and point out that if the Terre Haute were independently operated or were acquired by some other carrier, the Debtor could still acquire its coal supply from points on the Terre Haute line and if this resulted in profit to the Terre Haute, the profit would in the end go to the Debtor as it owns 97% of the stock. They suggest that upon the disaffirmance of the Terre Haute lease no permanent lease should be authorized but that the Trustees should negotiate short term operating agreements. They further suggest that the Terre Haute bonds should be left undisturbed as a lien upon the Terre Haute properties except for such agreement as may be reached for an extension or change in interest rate.

The Commission, in its report, after dealing with the claims of the Reconstruction Finance Corporation, the Milwaukee and Northern First Mortgage bonds and the Terre Haute lease, says:

> "The new bonds remaining available under our plan, after provision for the claims just mentioned and for new money, will consist of approximately $40,421,864 of first mortgage bonds and $108,012,719 of general mortgage bonds, series A and series B, while the secured creditors for which provision remains to be made consists of five classes holding, respectively, $5,072,000 of Northern consolidated mortgage bonds, $138,788,000 of the old Milwaukee's general mortgage bonds, $106,395,096 of the debtor's 50-year mortgage bonds, $182,873,693 of the debtor's adjustment mortgage bonds and $3,000,000 of the Gary's first mortgage bonds. In-
762 cluding unpaid interest accrued to December 31, 1938, these claims amount to approximately $555,000,000."

The Commission then concludes that, treating the Northern Consolidated bonds on the same basis as the General Mortgage bonds, these groups could be allotted only 25% in new First Mortgage bonds, 35% in new General Mortgage Series "A" bonds, 20% in new General Mortgage Series "B" bonds and 20% in new preferred stock.

The Court is of the opinion that the plan of reorganization certified by the Commission observes the rules of law

concerning the priority rights of the various claimants in all respects. The Court approves the finding of the Commission "that, within the limits of total capitalization and total fixed charges approved, any material changes in the distribution of the new securities would render the distribution less equitable from the standpoint of relative rights." The plan of distribution followed by the Commission would seem to be in accord with sound principle and should have judicial approval.

As to the burden imposed upon the General Mortgage lines by the Western lines, it should be noted that this burden is an operating burden. The operation of the western lines may not be discontinued in the absence of a Certificate of Convenience and Necessity and no one, not even the General Mortgage bondholders, has suggested that such operation be discontinued. The advantage resulting from the elimination of divisional mortgages is obvious. In fact, many of the difficulties arising in current reorganization proceedings are attributable in large measure to the existence of many mortgages on parts of a system. The desire of the Commission to eliminate that objection is commendable.

The necessity for an adequate Additions and Betterments Fund in the maintenance and operation of any railroad is obvious. There is ample evidence in the record to support the conclusion that the amount of $2,500,000, provided for this purpose, is necessary in addition to the founds available from equipment depreciation charges and road retirement charges in operating expenses and salvage recovered from property retired. Such additional amount must either be provided out of earnings or the railroad must borrow it. In the light of railroad experience in the past, it would seem preferable that such requirements be met from earnings. Reasonable provision for additions and betterments to be paid out of earnings does not, it is believed, violate any rights of the security holders.

Likewise, it does not appear that the treatment accorded the Fifty Year and Gary Mortgages gives any just ground of complaint to General Mortgage bondholders in the light of the amount of First Mortgage and General Mortgage Series "A" bonds awarded them.

In this connection, it should be noted that the Institutional Investors Group owns over 32% of these General Mortgage bonds and this group, which likewise owns a substantial amount of all of the issues involved, feels that

the entire allocation of the securities of the new Company under the Plan is fair and equitable. The basis of distribution is, of course, not capable of exact mathematical computation. The Commission and the Court are required to make and approve a fair and equitable distribution of the securities available and the Court believes that this has been done in this instance.

Fifty Year Bonds.

Objection on the part of the Fifty Year Mortgage bondholders is voiced both by the Mortgage Trustees and by the Protective Committee of the bondholders. Both presented arguments in opposition to the Plan and yet neither could suggest what might be done to remedy the Plan to meet the situation. One counsel suggested the possibility of
763 severing the western lines but counsel for the Protective Committee took the position, which seems to meet with general approval, that it is necessary that the lines be preserved in one system. The difficulty with the western lines is that the testimony introduced before the Commission and that introduced before the Court showing the pertinent information down to date shows that the western lines are deficit lines; that their earnings during the past few years have been insufficient to meet operating requirements. In making the computations, earnings from the pieces of lines east were allocated to the western lines. On the other hand, it is pointed out that, so far as the western lines are concerned, the Fifty Year Bonds are not junior to the General Mortgage bonds, since the latter have no lien on the western lines. Attention is also called to the fact that the First and Refunding Mortgage, which is senior to the Fifty Year Mortgage, ceases to be important by reason of the treatment accorded to the claim of the Reconstruction Finance Corporation and the resulting release and cancellation of the First and Refunding Mortgage bonds.

The fact is, however, that under the situation presented to the Commission and to the Court, the Fifty Year bonds are in the position of second lien bonds with a poor earnings record. Some complaint was voiced as to the method followed in arriving at the allocation of earnings used in the exhibits but no better method was suggested and no sound reason was advanced in support of a different result.

The following from the Commission's report seems a correct analysis of the situation of these bonds:

> "If the holders of the 50-year bonds are assigned a part of the new series B income bonds only, as herein provided, they will begin to share earnings with the general mortgage bonds and Northern consolidated bonds after $9,675,000 of prior charges, including a payment of $2,500,000 to the additions and betterments fund, such charges reflecting the respective amounts of equipment obligations, etc., upon which this approved plan is based. We think that this treatment goes far toward resolving the doubt as to the accuracy or fairness of the allocation of earnings in favor of the 50-year bonds, without injustice to the general mortgage bonds. In any event, under the new capital structure which we contemplate, it would be impracticable to assign to these claims new securities wholly junior to those assigned to the holders of the general mortgage bonds. Also, it is impracticable to avoid the assignment of preferred stock to part of the claims of both the 50-year bonds and the general mortgage bonds, resulting in a parity of treatment to the extent of 20 per cent of each claim. (See appendix.) However, the 50-year bonds will rank wholly junior in status to the claims of the Finance Corporation and the Northern first mortgage bonds. We see no means by which the exact present lien position of the general mortgage bonds or the 50-year bonds can be preserved, except under a prohibitive mortgage structure."

Under the circumstances, it would seem that the treatment accorded these bonds under the Plan is fair and equitable.

Gary Bonds.

The same may be said of the Gary bonds. The Gary line has a record of poor earnings. Some evidence was introduced tending to show the scrap value of the property. The property cannot be scrapped except through abandonment pursuant to appropriate order by the Commission. Moreover, no one has seriously suggested that that procedure should be followed.

The Commission gave further consideration to the Gary claim upon petition for modification of the report and concluded that the Gary bonds should receive 75% in new

preferred stock and 25% in new common stock whereas under the original Plan only common stock was to be allotted to the Gary bondholders. There is nothing in the record which would justify better treatment for this group.

764 Adjustment Bonds.

What has been said with reference to the Fifty Year bonds is equally applicable to the Adjustment bonds. They are junior liens upon the same property covered by the prior liens of the Fifty Year Mortgage and the First and Refunding Mortgage. The Commission allotted to them out of the permissible capital structure all that was left after satisfying prior claims. It could do no more.

General Creditors.

No objection has been made to the conclusion of the Commission that the only equity in the property of the Debtor which can be used as the basis of securities to satisfy the claims of general creditors is confined to the value of the Debtor's free assets. The Commission finds that not to exceed 55,000 shares of new, no par, common stock may be issued against those assets, of which amount 39,163 shares are allotted to the holders of the Adjustment Bonds. The remaining 15,837 shares are to be applied in settlement of all other unsecured claims on the basis of approximately 0.7 of a share for each $1000 claim.

Personal Injury Claims.

The only objection filed by any unsecured general creditor was filed on behalf of Ida E. Herschensohn and Herbert L. Herschensohn who hold claims for personal injuries sustained on August 26, 1934, at the depot of the Debtor at Milwaukee, Wisconsin. The claimants were not employees. Their claims were filed and allowed by the Master as general claims. The claimants object to the Plan because it does not make provision for the payment of these and similar claims as prior claims. The claimants rely upon the so-called six months rule applying in receivership proceedings and assert that the claims in question are the type of claims allowable under that rule and that they should be satisfied in full as current liabilities.

Sub-section (h) of Section 77 provides that unsecured claims, which would have been entitled to priority if a Receiver in Equity had been appointed on the day of the approval of the petition, shall be entitled to such priority and the holders of such claims shall be treated as a separate class or classes of creditors. However, the rule applying in equity receiverships is that, in order to entitle a claim to priority, it must appear, first, that the origin of the claim was a current expense of ordinary operation of the railroad necessarily incurred to keep it a going concern, second, that the claim accrued within a reasonably brief time, generally construed to be six months prior to the appointment of the Receiver, and, third, that the claim represented a debt contracted with the expectation or intention that it was to be paid out of current earnings of the railroad. This rule is announced by our own Circuit Court of Appeals in *Commonwealth Edison* v. *Continental Bank*, 93 Fed. (2nd) 265. Claims for personal injury are not such claims as satisfy the requirements just mentioned. Obviously, they do not constitute current expense of ordinary operation necessarily incurred to keep the railroad a going concern. As stated in *American Surety Company* v. *Wabash Ry. Co.*, 107 Fed. (2nd) 685:

> "Heretofore the courts have consistently decided that personal injury claims arising in the course of the operation of the railroad even to employees were without the rule."

When Section 77 was enacted, this rule, that personal injury claims are not within the class to which priority was given in equity receiverships, was recognized and the statute, sub-section (n), provides:

> "(n) In proceedings under this section, and in equity receiverships of railroad corporations now or hereafter pending in any court of the United States, claims for personal injuries to employees of a rail
> 765 road corporation, claims of personal representatives of deceased employees of a railroad corporation, arising under State or Federal laws, and claims now or hereafter payable by sureties upon supersedeas, appeal, attachment, or garnishment bonds, executed by sureties without security, for and in any action brought against such railroad corporation or trustee appointed pursuant to this section, shall be preferred against and paid out of the assets of such railroad corporation as operating expenses of such railroad."

This sub-section, it will be noted, extends priority to claims for personal injuries to employees. The claimants here were non-employees and are, therefore, not within the provision of sub-section (n).

Claimants rely upon the case of *In Re Chicago, Rock Island & Pacific Ry. Co.*, 90 Fed. (2nd) 312, as supporting the rule that claims of this character should be allowed as current expenses. A reading of the case discloses, however, that the claims there passed upon were based upon supersedeas bonds which are expressly included within sub-section (n) quoted above. The language in that case, relied upon by the claimants, is used to support the conclusion reached by the Court that the classification employed in the statute to give priority to claims listed in sub-section (n) was a reasonable classification. The case is no authority whatsoever for giving priority to personal injury claims of non-employees.

The question is squarely presented *In Re New York, New Haven & Hartford Railroad Company*, 92 Fed. (2nd) 428, in which case the Court points out that the only personal injury claims entitled to priority under sub-section (n) are those of employees. (See also *Maloney* v. *Missouri Pacific*, 95 Fed. (2nd) 213.)

In the light of the authorities and the express provisions of the statute, the objections of these claimants are without merit.

Provisions for Carrying Out Plan.

The Plan contains many provisions which might be classed as mechanical in character and which relate to the method of carrying out the reorganization. No objection has been made to any of these provisions except the provisions for a Voting Trust. In the first report of February 12, 1940, the Commission eliminated any provision for a Voting Trust. However, when the matter was reconsidered, the Commission, in its Supplemental Order of June 4, 1940, provided for a Voting Trust, having concluded, as stated in the Supplemental Order, that such a provision "would be desirable in order to insure continuity of managerial policy, protection to the bondholders and proper maintenance of the property, all of which are in the public interest." This conclusion seems justified from the record.

Corrections and Clarifications.

Subdivision Q of the Plan provides that the Court may cure any defect, supply any omission or reconcile any inconsistency in such manner or to such extent as may be necessary to carry out the Plan effectively.

Attention has already been called to one error in the designations in the Revised Appendix of certain series of General Mortgage bonds as "Series D" and "Series E", the correct designation of which should be "Series E" and "Series F". This same error appears in subdivision L (6) of the Plan (Page 35 Supplemental Order, Printed Record page 7092) and should be corrected by changing "Series D" and "Series E", referred to in that paragraph, to "Series E" and "Series F", respectively.

Certain other proposals have been made by the Bankruptcy Trustees to none of which has any objection been offered and all of which will be adopted to the extent hereinafter set forth. Their adoption by the Court is con-
766 ceived to be within the authority granted in subdivision Q of the Plan. Said proposals, so adopted, are as follows:

1. In Subdivision E of the Plan (Page 10 of the Supplemental Order, Printed Record page 7072) the word "trust" will be stricken from the first line of the indented portion designated (a) of the paragraph providing the uses which may be made of the Reserve and Retirement Fund, which correction will extend such use to equipment obligations generally as it is thought was intended.

2. In subdivision G of the Plan (Page 20 of the Supplemental Order, Printed Record page 7080) the provision in the proposed new Terre Haute Lease includes "not exceeding $12,000 a year to pay the taxes and corporate expenses of the Terre Haute." The words "taxes and" will be stricken from this portion, it appearing that the property taxes, alone, on the Terre Haute properties amount annually to many times this sum and obviously the Commission could not have intended that such an amount would cover taxes. The Court understands that it was intended that the lessee was to pay the taxes as now provided in the existing lease.

3. The last paragraph of subdivision H (1) (b) (Page 24 of the Supplemental Order, Printed Record page 7083) will be amended to read:

"If the new company shall establish and maintain,

in such manner as may be permitted or required by law or lawful regulation, an operating expense account for its roadway and structures, then the additions and betterments fund shall be paid from the reserve for depreciation on roadway and structures so credited in respect of the applicable income period, to the extent that the amount so credited to said depreciation reserve shall be adequate therefor. If, likewise, the new company shall charge to operating expenses, in any year the cost of any additions and betterments, properly chargeable to capital account under the rules now in effect, then the amount of such charges shall be credited to the additions and betterments fund as a reduction of the payment into the fund for that year. However, in case the accounting rules now in effect are changed, they shall not operate to reduce the amount of funds available for additions and betterments below the amount which would be available under an application of existing accounting rules."

the purpose being to protect the new Company against any reduction in the amounts available for additions and betterments by a change in accounting rules now in effect.

4. The second paragraph of subdivision M of the Plan (Page 38 of the Supplemental Order, Printed Record page 7095) will be amended to read:

"The new company shall be deemed to have assumed the obligations under existing executory contracts (except the present lease of the Terre Haute and the guaranty of the Terre Haute income-mortgage bonds), which by their terms do not terminate at or prior to the conclusion of the reorganization proceedings and which shall have been affirmed by the bankruptcy trustees prior to confirmation of the plan, and the new company shall also assume any executory contracts made by the trustees, with the approval or authorization of the court, which by their terms do not terminate at or prior to the conclusion of the reorganization proceeding. Provided, however, that the new Company shall have such rights to terminate contracts or leases entered into by the Debtor or by the Trustees since June 29, 1935, as are set forth in said respective contracts or leases, which rights shall be exercised within the time set forth therein, and if no definite time is fixed by the terms of such contracts or leases then the

right shall be exercised by the new company within six months after the entry of the final decree in these proceedings, or such further time as may be provided in such decree."

the purpose being to carry over to the new Company the right to exercise provisions for termination contained in existing contracts entered into during the pendency of the proceedings.

5. Immediately preceding the last paragraph of subdivision M there shall be added a new paragraph
767 (Page 39 of the Supplemental Order, Printed Record page 7095) reading as follows:

"The new company shall have authority to pay, when the amount thereof has been definitely determined, all claims to the extent that they are unpaid by the Trustees falling within the class or classes of those claims which the Trustees have been authorized to pay by any order or orders of the Court."

the purpose being to authorize the new Company to continue to completion payment of claims of a class or classes authorized to be paid by orders of the Court but not paid on account of accounting or other difficulties encountered in determining the amounts. Many claims of other carriers are included in such classes. This correction meets the objections filed on behalf of the New York Central Railroad and the Pennsylvania Railroad.

6. In the last paragraph of subdivision M of the Plan (Page 39 of the Supplemental Order, Printed Record pages 7095 and 7096) a clerical error will be corrected by changing the reference to claims arising from the disaffirmance of executory leases or contracts to read "of the Trustees" instead of "by the Trustees." This correction appears to have been made in the printed copy of the Supplemental Order. In addition, there will be added at the end of said paragraph the following:

"Claims, arising from the disaffirmance of executory leases or contracts of the Debtor, shall constitute general unsecured claims against the Debtor, and shall be satisfied in the same manner as other general unsecured claims by the allocation of common stock in the manner provided in the plan."

This provision is deemed proper in the interest of clarity.

7. Immediately following the second paragraph of subdivision M, (Page 39 of the Supplemental Order, Printed

Record page 7095) as amended by "4" above, there will be added the following:

> "The Bankruptcy Trustees may at any time up to the final consummation of the Plan disaffirm any executory contracts of the Debtor or which constitute obligations of the Debtor entered into prior to the filing of the petition for reorganization herein and as to which the Trustees have not assumed obligations pursuant to Court approval or authorization and any claims or damages resulting from such disaffirmance shall be treated in the same manner as herein provided for general unsecured creditors, and the Court shall retain jurisdiction for the purpose of disposing of the same. All such contracts not disaffirmed by the Trustees or in the Plan shall be deemed to have been affirmed by the Trustees and shall be assumed by the new Company."

The purpose of this provision is, first, to extend the right of disaffirmance to as late a date as practical, and, second, to avoid the necessity of positive action by the Trustees to affirm all existing contracts desired to be continued of which there appears to be a great number.

With these corrections and clarifications, which it is thought can be properly made within the framework of the Plan itself, the Court is satisfied and concludes that the provisions of the Plan comply with the provisions of subsection (b) of Section 77 of the Bankruptcy Act, that the Plan is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders, that the approximate amounts to be paid by the Debtor, or by any corporation or corporations acquiring the Debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed, so far as they could be ascertained at the date of the hearing, are reasonable, are within such maximum limits as are fixed by the Commission and are, within such maximum limits, subject to the approval of the Court, which approval is hereinafter indicated, that the Plan provides for the
768 payment of all costs of administration and all other allowances made or to be made by the Court, and that

all of the statutory prerequisites to the approval of the Plan as certified by the Interstate Commerce Commission have been met.

Allowance for Fees and Expenses.

The only question remaining relates to the applications for allowances for fees and expenses incurred in connection with the reorganization and the Plan. Claims were filed by all of those asking for such allowances and an extended hearing was had upon said claims before an Examiner of the Interstate Commerce Commission at which exhaustive evidence was introduced on behalf of the several claimants. The Commission, upon the record so made, has fixed the maximum limits to be allowed to all claimants for the period up to May 15, 1940, and the question of allowances has been submitted to the Court upon the record so made before the Commission's Examiner. The Examiner had the opportunity of observing all of the witnesses and the testimony, as shown by the Commission's report, has been fully considered and the Court finds that the maximum limits so fixed in each case constitute reasonable allowances to be made to the respective claimants without prejudice to the right of any claimant to present further claim for services rendered or expenses incurred subsequent to May 15, 1940, in connection with the proceeding or Plan.

Except to the extent that proposed corrections and clarifications are approved herein, all objections to the Plan will be overruled and the Modified Plan, as certified to this Court by the Interstate Commerce Commission, with the corrections and clarifications herein set forth and as herein interpreted, will be approved and the fees and expenses will be ordered paid in the amounts fixed as maximum limits by the Interstate Commerce Commission.

Counsel will promptly prepare and, on notice, present proposed findings of fact and conclusions of law and a decree or decrees consistent with the views herein expressed.

M. L. Igoe,
Judge, U. S. District Court.

Dated, October 21, 1940.

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EXHIBIT "A"

REVISED APPENDIX

C., M., St. P. & P. R. R. Co. Reorganization, F. D. 10882

	Present Obligations and Stock			Approved Plan as modified						
	Principal Amount	Interest accrued to Dec. 31, 1938 and not authorized to be paid	Total	Undisturbed or Extended	First Mortgage Bonds	General Mortgage 4½% Bonds Series A	General Mortgage 4½% Bonds Series B convertible	5% Preferred Stock	Common Stock No-par Value shares	
					(4% interest except Terre Haute bonds)					
Equipment obligations	$33,322,999	$	$33,322,999	$33,322,999		$	$	$		
R. F. C. loans	12,920,463		12,920,463(a)		(100%) $11,947,164					
Note to Cont. Ill. Nat. B'k. & Trust Company	1,184,000		1,184,000	1,184,000						
Terre Haute bonds:										
So. Ind. Ry. 4s, 1951	7,287,000		7,287,000		7,287,000)					
Bedford Belt Ry. 5s, 1938	250,000		250,000		250,000)					
T. H. first & ref. 5s, 1960	8,056,000		8,056,000		8,056,000)	See Note.				
T. H. income 5s, 1960	6,336,000		6,336,000		6,336,000)					
Mil. & Nor. R. R. bonds:										
First mtg. 4½s, 1939	2,117,000	103,204	2,220,204		(70%) 1,554,143	(30%) 666,061				
Consol. mtg. 4½s, 1939	5,072,000	247,260	5,319,260		(25%) 1,329,815	(35%) 1,861,741	(20%) 1,063,852	(20%) 1,063,852		
General Mtg. bonds, 1989:										
Series A, 4s	48,241,000	5,653,090	53,894,090		(25%) 13,473,523	(35%) 18,862,931	(20%) 10,778,818	(20%) 10,778,818		
Series B, 3½s	8,956,000	920,211	9,870,211		2,467,553	3,454,574	1,974,042	1,974,042		
Series C, 4½s	42,597,000	5,652,191	48,249,191		12,062,298	16,887,217	9,649,838	9,649,838		
Series E, 4½s	24,000,000	3,217,320	27,217,320		6,804,330	9,526,062	5,443,464	5,443,464		
Series F, 4¾s	15,000,000	2,137,381	17,137,381		4,284,345	5,998,083	3,427,476	3,427,476		
							(15%)	(60%)	(25%)	
50-yr mtg. 5s, 1975	106,395,096	20,835,706	127,230,802				19,084,621	76,338,481	318,077	
Convert.—Adjust. mtg. 5s, 2000	182,873,693	79,550,055	262,423,748						1,749,492	
									39,163(b)	
								(75%)	(25%)	
Gary first mtg. 5s, 1948	3,000,000	562,500	3,562,500					2,671,875	8,906¼	
				5,000,000.	(Assumed amount of new money bonds issued in reorganization. Interest assumed at 4%)					
Unsecured claims (9/30/37)	445,162		445,162							
Total debt	508,047,413	118,878,918	626,926,331						15,837(d)	
Preferred stock	119,307,300			No equity						
Common stock, no-par value	1,174,060 shs.	(b)		No equity						
Totals, New Company	34,506,999				58,923,171	57,256,669	51,422,111	111,347,846	2,131,475¼	
Terre Haute					21,929,000	(See Note)				

Note: These items, strictly not a part of the capital structure of the new company, are included here since, under the plan, the new company will assume obligation with respect to principal and interest of the four classes of Terre Haute bonds, if the terms thereof are modified as provided in the plan. Such modification includes the provision that the bonds will bear fixed interest at the rate of 2.75 percent and contingent interest at the rate of 1.5 percent per annum.

(a) Reflecting repayment of $290,000 Jan. 3, 1939. Further reduced for purpose of the plan by crediting $973,290 cash in hands of first and refunding mtg. trustee Dec. 29, 1938, leaving $11,947,164 to be discharged by issue of new securities.

(b) Not including capital stock of the Terre Haute. Of such stock, 1,259 shares are not owned by the Milwaukee.

(c) Additional common stock assigned on basis of free assets.

(d) Other additional common stock issued on the basis of free assets; to be issued to holders of unsecured claims as provided in the plan.

SUMMARY

	Principal Amount	Annual Charges
Equipment obligations, to be assumed; maturities to be rearranged in part	$ 33,322,999	$ 1,286,000
Bank note, undisturbed	1,184,000	23,680
First Mtg. bonds of new company	58,923,171	2,356,927
New Terre Haute bonds; portion representing fixed interest	15,350,300	603,047
Total fixed int. debt	108,780,470	4,269,654
Adds.—Betts fund; mandatory payment		2,500,000
Gen. mtg. 4½% income bonds of new company	108,678,780	4,890,545
New Terre Haute bonds, portion representing contingent interest	6,578,700	328,935
Total system debt	224,037,950	
Sinking fund, approx		543,394
		12,532,528
Charges ahead of dividends		
New 5% preferred stock	111,347,846	5,567,392
New no-par common stock, shown at $100 a share	213,147,525	
	548,533,321	

Percent of debt to total capitalization—40.8

1 And afterwards, to wit, on the 6th day of November, A. D. 1940, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit: Entered Nov. 6, 1940.

2 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER.

This cause coming on to be heard on motion of Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bondholders' Committee, by West & Eckhart and William A. McSwain, its attorneys, for leave to file its amended objections to the Modified Plan of Reorganization heretofore filed herein; and it appearing to the Court that due notice of this motion has been given, and the Court having heard arguments of counsel in open Court, and it appearing to the Court that said amended objections do not raise new issues, and counsel for Terre Haute Income Mortgage Bondholders' Committee having stated that the purpose of the filing of amended objections is to conform the written objections to the objections heretofore made herein in brief and oral argument upon the hearing before the Court on the Plan, and passed by the Court in its opinion thereon, and the Court being fully advised in the premises;

It Is Ordered that leave be and the same hereby is given to Chicago, Terre Haute and Southeastern Railway
3 Company Income Mortgage Bondholders' Committee to file instanter its amended objections to the Modified Plan of Reorganization.

It Is Further Ordered that said amended objections are subject to the opinion of this Court rendered October 21, 1940, and any decree or order entered in conformance with said opinion.

Enter:

Igoe,

Judge.

Dated: November 6, 1940.

4 Endorsed: District Court of the United States. * * (Caption—60463) * * Order. Enter Nov. 6, 1940.

Filed Nov. 6, 1940.

770 And on, to wit, the 6th day of November, A. D. 1940, came the Terre Haute Income Mortgage Bondholders' Committee by its attorneys and filed in the Clerk's office of said Court its certain amended objections to modified plan of reorganization of debtor and committees' claim for equitable treatment in words and figures following, to wit:

771 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

AMENDED OBJECTIONS OF TERRE HAUTE INCOME MORTGAGE BONDHOLDERS' COMMITTEE TO MODIFIED PLAN OF REORGANIZATION OF DEBTOR; AND COMMITTEE'S CLAIM FOR EQUITABLE TREATMENT.

William T. Bruckner, Percy B. Eckhart and James H. Orr, as a Committee for the Protection of holders of Terre Haute Income Mortgage Fifty-Year Gold Bonds, represent that their Committee is a "party in interest" within the meaning of the order of this Court dated June 21, 1940.

The Committee objects to the Modified Plan of Reorganization certified to this Court by the Interstate Commerce Commission for the following reasons:

1. There is no justification in law or in fact for either the modification of the Terre Haute Bonds or the rejection of the Terre Haute Lease.

2. The Plan provides that the Terre Haute Lease shall be rejected after confirmation if the Court determines that substantially all of the Terre Haute bondholders have not accepted the modifications offered by the Plan.

3. In the event substantially all of the Terre Haute bond holders do not accept the proffered modifications,

772 the Terre Haute Lease shall be rejected as of the "date of determination" by the Court of such fact.

4. The Plan makes no provision for an accounting to the Terre Haute by the Trustees in the event of rejection of the Lease. Provision should be made for such an accounting for the earnings from the operation of the properties during the period from the filing of the petition to the date of rejection.

Claim for Equitable Treatment.

In order to afford fair and equitable treatment to the Terre Haute and its security holders, the Modified Plan of Reorganization of the Debtor should be disapproved by the Court in respect of the matters affecting the Terre Haute and its bondholders. The claims of this Committee for fair and equitable treatment as are follows:

1. That the existing Lease of the Terre Haute properties to the Milwaukee should be adopted by the reorganized Debtor.

2. That the Trustees of the Debtor should make good the equipment vacancies under the Lease and under the mortgages securing the Terre Haute Bonds.

Respectfully submitted,
Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bondholders Committee,
By West & Eckhart,
West & Eckert,
William A. McSwain,
William A. McSwain,
Its Attorneys.
38 S. Dearborn St.,
Chicago, Illinois.

773 Endorsed: In the District Court of the United States. * * (Caption—60463) * * Amended objections of Terre Haute Income Mortgage Bondholders Committee to modified plan of reorganization of debtor; and committees' claim for equitable treatment. Filed Nov. 6, 1940, at 10:00 o'clock A. M. Hoyt King, Clerk.

4344 MHB:LMC

INTERSTATE COMMERCE COMMISSION

Office of the Secretary

Washington

W. P. Bartel,
Secretary

Finance Docket No. 10882
November 5, 1940.

Mr. Hoyt King,
Clerk, United States District Court,
Chicago, Ill.

Dear Sir:

Enclosed herewith is the corrected copy, certified, of the report and order of Division 4 of the Commission fixing maximum limits of allowances for compensation and reimbursement of expenses in the Chicago, Milwaukee, St. Paul & Pacific Railroad Company reorganization proceeding, your No. 60463. You will note that there has been no change in the total amount contained in the report and order of October 2, 1940, but that there has been a change in the division between the amounts for compensation rendered and expenses incurred by Oliver & Donnally for the Mutual Savings Bank group. The total remains at $13,377 for that firm. The corrections are shown in ink on page 47 of the report and on page 2 of the order.

Respectfully,

W. P. Bartel,
Secretary.

Encl.

Filed Nov. 7, 1940 at 9:50 o'clock A. M. Hoyt King, Clerk.

Received Nov. 7, 1940. Hoyt King, Clerk. United States District Court.

4345 INTERSTATE COMMERCE COMMISSION

Washington

Finance Docket No. 10882

Chicago, Milwaukee, St. Paul & Pacific Railroad Company Reorganization

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SUMMARY OF REPORT.

October 2, 1940.

The following table shows the amounts of allowances, from the inception of these proceedings to May 15, 1940, for compensation and reimbursement of expenses to be paid out of the debtor's estate, for which petitions have been filed with the court, together with the maximum limits of such allowances as fixed by the Commission, division 4, in the accompanying report and order.

W. P. Bartel,
Secretary.

Claimant	Amount claimed	Maximum fixed
H. E. Byram, chairman of debtor's board	$ 24,462	Nothing
Cravath, de Gersdorff, Swaine & Wood, counsel for debtor	106,682*	46,682
Institutional Group Committee, insurance companies	12,967	12,967
Sidley, McPherson, Austin & Burgess, counsel	137,836	79,876
Mutual Savings Bank Group Committee, savings banks	948	948
Oliver & Donnally, counsel	16,377	13,377
Charles W. Paltzer, associate counsel	125	125
The National City Bank of N. Y. and William W. Hoffman, mortgage trustees	12,785	9,285
Shearman & Sterling, counsel	25,480	6,980
Montgomery, Hart, Pritchard & Herriott, associate counsel	6,500	2,500
United States Trust Company of N. Y., mortgage trustee	25,257	10,257
Stewart & Shearer, counsel	30,949	9,949
Wilson & McIlvaine, associate counsel	7,610	2,610

* $36,590 of this amount has been paid.

Claimant	Amount claimed	Maximum fixed
Guaranty Trust Company of N. Y., mortgage trustee	16,553	13,553
Davis, Polk, Wardwell, Gardiner & Reed, counsel	23,210	13,210
Tenney, Harding, Sherman & Rogers, associate counsel	4,549	2,049
Chemical Bank & Trust Company, mortgage trustee	5,000	3,000
Wright, Gordon, Zachry & Parlin, counsel	12,610	5,360
D'Ancona, Pflaum & Kohlsaat, associate counsel	6,602	2,102
City Bank Farmers Trust Company, mortgage trustee	10,293	5,472
Mitchell, Taylor, Capron & Marsh, counsel	23,328	10,828
Winston, Strawn & Shaw, associate counsel	7,138	3,638
Lawrence Richardson, technical adviser	1,629	1,629
St. Louis Union Trust Company, mortgage trustee	7,827	3,327
Bryan, Williams, Cave & McPheeters, counsel	7,920	3,920
Protective Committee for Fifty-Year Bonds	635	635
and William Church Osborn	45	45
Hodges, Reavis, Pantaleoni & Downey, counsel	21,332	13,332
Malcolm Mec: rtney, associate counsel	475	475
Samuel W. McIntosh, interim counsel	250	250
George H. Parker, technical adviser	3,127	3,127
4346		
H. E. Moulton, technical adviser	1,255	500
J. L. White, technical adviser	549	549
Joseph R. Warner, technical adviser	500	500
Terre Haute First and Refunding Group	769	769
Hunt, Hill & Betts, counsel	8,139	6,639
Protective Committee for Preferred Stock	1,802	1,802
Robert E. Smith, secretary	6,917	875
Broadus J. Clarke, successor secretary	750	750
Edward R. Johnston and Albert K. Orschel, counsel	20,119	5,619
William W. Wakefield, technical adviser	17,706	2,206
Independent Committee for Protection of Debtor's Bondholders	5,000	Nothing
Julius Weiss, counsel	20,826	2,326
Guggenheimer & Untermyer and Sabash, Perlman, Goodman & Rein, counsel for interveners	15,967	5,467
Imperial Trust Company, Limited, John Roth, and Francis W. Keeler, interveners	75	75
Thomas F. Murphy, counsel	906	906
Jack E. Bagon, successor counsel	442	442
McDonald & Richmond, associate counsel	220	220
Shulman, Shulman and Abrams, counsel for interveners	12,917	Nothing
Reconstruction Finance Corporation	953	953
Brobeck, Phleger and Harrison, special counsel	218	218
Carter, Ledyard & Milburn, counsel for equipment trustee	300	300
Total	675,451	312,624

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 10882

Chicago, Milwaukee, St. Paul & Pacific Railroad Company Reorganization

Submitted August 2, 1940. Decided October 2, 1940.

Upon petitions, maximum limits of final allowances of compensation for services rendered and expenses incurred to May 15, 1940, in connection with the reorganization proceedings and plan, approved.*

Robert T. Swaine and Roswell L. Gilpatric for Chicago, Milwaukee, St. Paul & Pacific Railroad Company, debtor.

A. N. Whitlock for trustees of debtor.

Kenneth F. Burgess, Edwin S. S. Sunderland, Thomas O'G Fitz Gibbon, George John Miller, Henry F. Tenney, Roger R. Leech, Guido Pantaleoni, Jr., Joseph H. Morna, II, Albert K. Orschel, Jack E. Bagon, Fred N. Oliver, Elmer E. Boyner, Harry Hoffman, Theodore E. Rein, A. Marvin Braverman, Sanford H. E. Freund, Jack D. Gunther, Boykin C. Wright, Robert M. Becket, M'Cready Sykes, Cobert Ets Hokin, Meyer Abrams, R. R. McRoberts, John B. Marsh, Edward E. Watts, Jr., Anthony L. Michel, Irving Herriott, Julius Weiss, Reese D. Alsop, and H. E. Byram for petitioners.

REPORT OF THE COMMISSION.

Division 4, Commissioners Porter, Mahaffie, and Miller by Division 4:

In compliance with an order entered on April 26, 1940, in proceedings No. 60463, pending in the District Court of the United States for the Northern District of Illinois, Eastern Division, for the reorganization of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, referred to herein as the debtor, pursuant to section 77 of the Bank-

* Previous reports 212 I. C. C. 150 and 225; 224 I. C. C. 219; 228 I. C. C. 180; 230 I. C. C. 548; 233 I. C. C. 759; 239 I. C. C. 485, and ..... I. C. C. .....

ruptcy Act, U. S. Code Title 11, Sec. 205, the various parties in interest filed in the court petitions for allowances of fees and expenses in connection with the debtor's reorganization proceedings and plan. Under the order of the
4347 the court the petitions were to be filed on or before May 31, 1940, and were to give a detailed and specific account of services rendered and expenses incurred to May 15, 1940. Unless otherwise stated herein, it will be understood that the allowances claimed in each of the petitions are for services and expenses to that date. Copies of all petitions have been transmitted to us for the fixing of maximum limits pursuant to the provisions of the statute. We have held a hearing on these petitions. As amended in minor respects at the hearing, the several claims are as follows:

Petitioner or claimant	Representation or capacity	Allowances requested: Compensation	Disbursements	Total	Group total
H. E. Byram	Chairman of debtor's board of directors	$ 24,462	$	$ 24,462	$ 24,462
Cravath, de Gersdorff, Swaine & Wood	Counsel for debtor	a100,000	6,682	106,682	106,682
Institutional Group Committee	Life Insurance Group		12,967	12,967	
Sidley, McPherson, Austin & Burgess	Counsel for Institutional Group Committee	b127,000	b10,836	137,836	150,803
Mutual Savings Bank Group Committee	Mutual Savings Bank Group		948	948	
Oliver & Donnally	Counsel for Mutual Savings Bank Group Committee	c15,000	d1,377	16,377	
Charles W. Paltzer	Associate counsel for Mutual Savings Group Committee	c125		125	17,450
National City Bank of N. Y. and William W. Hoffman	Trustees under debtor's adjustment mortgage	12,500	e285	12,785	
Shearman & Sterling	Counsel for National City Bank and Hoffman	25,000	480	25,480	
Montgomery, Hart, Pritchard & Herriott	Associate counsel for National City Bank and Hoffman	6,500		6,500	44,765
United States Trust Company of N. Y.	Trustee under general mortgage of debtor's predecessor	25,000	257	25,257	
Stewart & Shearer	Counsel for United States Trust Company	30,000	f949	30,949	
Wilson & McIlvaine	Associate counsel for United States Trust Co.	7,500	f110	7,610	63,816

a—Petition specified $100,000 against which an interim allowance of $30,000 (see 233 I. C. C. 759) is to be credited. Reimbursement of $6,590.29 was also authorized in the cited case.

b—Committee has paid counsel $115,000 and reimbursed him $9,713.

c—Committee has paid counsel $7,500 and has fully paid associate counsel.

d—Committee has reimbursed counsel.

e—Excludes $6.53 disbursed by associate counsel who were reimbursed, through the trustees, by the debtor.

f—Trustee has reimbursed counsel and associate counsel.

Petitioner or claimant	Representation or capacity	Allowances requested: Compensation	Disbursements	Total	Group total
Guaranty Trust Company of N. Y.	Corporate trustee under debtor's fifty-year mortgage	15,000	1,553	16,553	
Davis, Polk, Wardwell, Gardiner & Reed	Counsel for Guaranty Trust Company	22,000	g1,210	23,210	
Tenney, Harding, Sherman & Rogers	Associate counsel for Guaranty Trust Company	4,500	g49	4,549	44,312
Chemical Bank & Trust Company	Trustee under debtor's first and refunding mortgage	5,000		5,000	
Wright, Gerdon, Zachry & Parlin	Counsel for Chemical Bank	12,250	h360	12,610	
D'Ancona, Pflamm & Kohlsaat	Associate counsel for Chemical Bank	6,500	102	6,602	24,212
City Bank Farmers Trust Company	Successor trustee under first and consolidated mortgages of Milwaukee & Northern R. R. Co.	9,821	472	10,293	
Mitchell, Taylor, Capron & Marsh	Counsel for City Bank	i22,500	i828	23,328	
Winston, Strawn & Shaw	Associate counsel for City Bank	7,000	i138	7,138	
Lawrence Richardson	Technical adviser for City Bank	i1,450	i179	1,629	42,388
St. Louis Union Trust Company	Trustee under first mortgage of Chicago, Milwaukee & Gary Ry. Co.	7,590	327	7,827	
Bryan, Williams, Cave & McPheeters	Counsel for St. Louis Union Trust Company	7,500	m420	7,920	15,747
Protective Committee for Fifty-Year Bonds and William Church Osborn	Holders of debtor's fifty-year mortgage bonds, series A		635	635	
	Same		45	45	
Hodges, Reavis, Pantaleoni & Downey	Counsel for Protective Committee for Fifty-Year Bonds and Osborn	n20,000	o1,332	21,332	

g—Corporate trustee has reimbursed counsel and associate counsel.
h—Trustee has reimbursed counsel.
i—Trustee has advanced an undetermined proportion of $25,000 to counsel and has reimbursed them $821 and associate counsel $127 it has paid and reimbursed its technical adviser.
m—Trustee has reimbursed counsel $189.
n—Osborn has paid counsel $2,000.
o—Counsel has disbursed $598 for account of Osborn and $734 for account of the committee. Osborn has reimbursed counsel $594.

Malcolm Mecartney	Associate counsel for above committee	475		475	
Samuel W. McIntosh	Counsel for bondholders who later joined above committee	250		250	
George H. Parker	Technical adviser for Osborn	p2,625	p502	3,127	
H. G. Moulton	Same	p1,255		1,255	
J. L. White	Same	p500	p49	549	
Joseph R. Warner	Same	p500		500	
					28,168
Terre Haute First and Refunding Group	Holders of first and refunding mortgage bonds of Chicago, Terre Haute & Southeastern Ry. Co.		769	769	
Hunt, Hill & Betts	Counsel for Terre Haute, First and Refunding Group	7,500	639	8,139	8,908
Protective Committe for Preferred Stock	Holders of debtor's preferred stock		q1,802	1,802	
Robert E. Smith	Predecessor secretary for Protective Committee for Preferred Stock	1,660	r4,357	6,017	
Broadus J. Clarke	Successor secretary for above committee	750		750	
Edward R. Johnston and Albert K. Orschel	Counsel for above committee	19,500	s619	20,119	
William W. Wakefield	Technical adviser for above committee	q17,375	r331	17,706	46,394
4349					
Independent Committee for Protection of Debtor's Bondholders	Holders of debtor's bonds	5,000		5,000	
Julius Weiss	Counsel for Independent Committee	t20,000	u826	20,826	
					25,826

p—Osborn has paid and reimbursed all technical advisers.

q—Having paid Wakefield $1,875, the committee included this amount in its claim. It has herein been excluded from the latters' claim to avoid duplicarion.

r—The committee has reimbursed Smith $1,725 and fully reimbursed Wakefield.

s—The committee has reimbursed counsel, but their law firm has advanced $882.21 to it.

t—Includes indeterminate amount of compensation for services of Edgar Bernhardt of Chicago, Ill., and Sherman Minton of New Albany, Ind., special counsel.

u—Committee has reimbursed counsel approximately $500.

Petitioner or claimant	Representation or capacity	Allowances requested: Compensation	Disbursements	Total	Group total
Guggenheimer & Untermyer and Sabath, Perlman, Goodman & Rein	Counsel for Anglo Continentale Treuhand, A. G., intervener, holder of Milwaukee & Northern R. Co. bonds				
	Associate counsel for Anglo Continentale Treuhand, A. G.	v15,500	v467	15,967	
					15,967
Imperial Trust Company, Limited, John Roth, and Francis W. Keeler	Holders of consolidated mortgage bonds of Milwaukee & Northern R. R. Co.		75	75	
Thomas F. Murphy	Predecessor counsel for Imperial Trust Co., et al.	w500	w346	906	
Jack E. Bagon	Successor counsel for Imperial Trust Co., et al.	w365	w77	442	
McDonald & Richmond	Associate counsel for Imperial Trust Co., et al.	w220		220	
					1,643
Shulman, Shulman and Abrams	Holders of debtor's adjustment mortgage bonds	12,500	437	12,937	
					12,937
Reconstruction Finance Corporation	Holder of debtor's secured notes		953	953	
Brobeck, Phleger and Harrison	Special counsel for R. F. C.	x205	x13	218	
					1,171
Carter, Ledyard & Milburn	Counsel for Manufacturers Trust Company, successor trustee under equipment trust, series A, of debtor's predecessor	800		800	
					800
Total		621,848	54,803	676,451	676,451

v—Anglo Continentale has paid counsel $1,500 and has reimbursed them in whole or in part.
w—Imperial Trust Co., et al., have paid and reimbursed counsel and associate counsel.
x—R. F. C. has paid and reimbursed special counsel.

The debtor's system extends from Chicago, Milwaukee, and other eastern termini to Seattle, Tacoma, and other points on the Pacific coast, with lines extending to Duluth, Kansas City, Omaha, Rapid City, Fargo, and many other cities. Approximately 11,115 miles of road are operated. The total capitalization of the debtor, taking the no-par-value common stock at $100 a share, was $744,760,713. The principal amounts of the debt of the debtor as of December 31, 1938, comprised equipment obligations $33,322,999; loans from the Reconstruction Finance Corporation, hereinafter called the Finance Corporation, $12,920,463; a note to the Continental Illinois National Bank & Trust Company $1,184,000; bonds of the Chicago, Terre Haute & Southeastern Railway Company, hereinafter called the Terre Haute, consisting of Southern Indiana Railway bonds $7,287,000, Bedford Belt Railway bonds $250,000, Terre Haute first and refunding bonds $8,056,000, and Terre Haute income bonds $6,336,000; Milwaukee & Northern Railroad first-mortgage bonds $2,117,000 and consolidated-mortgage bonds $5,072,000; general-mortgage bonds, series A, $48,241,000, series B, $8,950,000, series C, $42,597,000, series D, $24,000,000, and series E, $15,000,000; 50-year mortgage bonds $106,395,096; convertible adjustment-mortgage bonds $182,873,693; and Chicago, Milwaukee & Gary Railway Company first-mortgage bonds $3,000,000.

Under the Commission's plan of reorganization approved on February 12, 1940, and modified on June 4, 1940*, effective as of January 1, 1939, the capitalization of the reorganized company would be $548,533,321, consisting of 4350 $108,780,470 of fixed-interest debt, $115,257,480 of contingent-interest debt, $111,347,846 of preferred stock, and $213,147,525 of no-par common stock, shown at $100 a share.

The debtor filed a petition for reorganization under section 77 of the Bankruptcy Act on June 29, 1935. With its petition it filed a plan of reorganization dated July 1, 1935, which it modified on August 5, 1935. The committee for a group of institutional investors, hereinafter called the institutional committee, filed a plan on January 10, 1938, and on February 1, 1938, presented a modified plan dated January 24, 1938. The debtor also filed a modification of the committee's plan. No other plans have been filed. Pub-

* 239 I. C. C. 485, ... I. C. C. .....

lic hearings were held, briefs were filed, an examiner's proposed report was issued, exceptions thereto filed, oral argument heard, a plan approved by the Commission issued, and a modified plan issued. The plan approved by the Commission was based largely on the committee's plan as modified by the debtor.

The details of the plan submitted, the proposed modifications, the positions taken by the several parties, and the provisions of the plan finally approved are more fully set forth in the reports of February 12 and June 4, 1940, *supra*.

The several parties had divergent views with respect to the allocation of new securities to the various interests and the extent to which the preferred and common stock should participate in the reorganization through allocation of securities. There was divergence of views with respect to the proper amount of the capitalization and fixed charges, the terms and provisions of the new securities to be issued, the provisions of the additions and betterments fund, the consolidation of the Terre Haute with the debtor, and other matters. The capitalization and fixed charges adopted by the Commission were smaller than were specified in any of the plans.

Details of all phases of the activities of the several petitioners for final allowances of compensation and of expenses in connection with the reorganization proceedings and plan before both the Commission and the court are set forth in the respective petitions and in the evidence adduced at the hearings thereon. Details of all disbursements were submitted for the record and, except as otherwise indicated by specific treatment herein, all such expenses are regarded as reasonably necessary in the performance of the services to which they were incident. Expenses in some instances include certain charges for extraordinary stenographic overtime work and night work. We have hertofore found that such charges should be regarded as part of the office overhead expense which is reflected in the compensation allowance, but since they are in the nature of extraordinary expenses actually incurred because of the pressure of the work, no disallowance thereof as expenses will be made, but that fact will be taken into consideration in fixing the maximum limit of compensation. *Chicago & N. W. Ry. Co. Reorganization*, ... I. C. C. .....

The claims for compensation from the debtor's estate

for services of petitioners and their counsel and technical advisers will be hereinafter considered. In several instances the parties indicate that, if the entire amount claimed is not allowed from the general estate, liens stipulated in the mortgages will be enforced. The maximum allowances of compensation fixed herein are established for all services, as comprehended by the various petitions, which have been rendered in connection with the reorganization proceedings and plan and which, therefore, under the statute, are compensable out of the debtor's estate within maximum limits fixed by us. In so far as serv-
4351 ices in connection with the proceedings and plan are concerned, it does not appear that there are any which are not covered by the petitions and for which a lien should attach to either the general or a special estate. All such services are clearly within our jurisdiction to determine maximum limits; and no lien attaches and no allowance can be made for those services in excess of the amounts fixed by us.

The District Court of the United States for the Northern District of Illinois, Eastern Division, on September 11, 1940, approved the plan of reorganization of the Chicago and North Western Railway Company. In that proceeding the Irving Trust Company, mortgage trustee, took the position that under the mortgage it was entitled to reasonable compensation for itself and its attorney that it had a lien for all such compensation, and that to the extent that such services and expenses may not be compensated for under the maximum limits fixed by the Commission under section 77 of the Bankruptcy Act, the court should fix the reasonable and proper amount of such compensation and expenses and should direct the payment of such balance out of the properties subject to the lien of the mortgage or their proceeds. In its opinion on this question the court said:

The court is satisfied that it has no power to make allowances for compensation for services compensable under the statute aforesaid in excess of the maximum allowances fixed by the Interstate Commerce Commission whether such excess be payable out of the mortgaged property only or from other sources. Whether, if a mortgage trustee or its counsel earned compensation under the terms of the mortgage for service which was not compensable under the statute aforesaid, the court would have power to make an

allowance payable from some source, is a question which it is unnecessary to decide on the present record.

H. E. Byram, chairman of the board of directors of the debtor, is the sole officer of the debtor who has not been in the employment of the trustees of the debtor. As chairman of the board he has attended 8 board meetings and fourteen executive committee meetings since January 1, 1936. He was present at and conducted annual meetings of stockholders, attended most of the hearings before the Commission, and made frequent trips over the debtor's railroad each year. He has gone daily to the offices of the board in New York for eight to nine months in each year but has had no particular duties except those described above although he has kept informed on operating matters, believing that he had some responsibility to the stockholders. He has received no compensation for the performance of his duties since January 1, 1936, other than his director's fee of $20 for each meeting attended. Before the assumption of his office in 1928, the compensation was $25,000 a year, which after several reductions, some of which were voluntary, was fixed at $11,000 in 1935. He requests compensation from January 1, 1936. No claim for expenses is made. In the court's approval of the debtor's petition for reorganization, the maintenance of the debtor's corporate existence during the proceedings was directed. An allowance of compensation to Byram could be only as a representative of the stockholders. In fixing maximum limits of allowances of parties in interest or committees or other representatives of creditors and stockholders, the Commission is limited to expenses incurred in connection with the proceeding and plan. As there has been no showing that the activities of Byram have been in connection with the proceedings and plan, or have been of any benefit to the estate, there should be no allowance to him in this proceeding.

Cravath, de Gersdorff, Swaine & Wood as counsel for the debtor from May 16, 1935 to January 14, 1939, advised and assisted the debtor in formulating, preparing, drafting, and modifying its plan of reorganization and in
4352 reviewing and preparing criticisms of or objection to other plans presented or discussed in the proceedings; participated in negotiations with the principal large security holders and creditors of the debtor; acted as counsel for the debtor in the proceedings before the court and at

the hearings before us on the debtor's plan and upon the institutional committee's plan presented in the proceedings; and otherwise represented the debtor in the reorganization proceedings before us; performed services for the debtor in connection with controversies as to the relative priority of mortgage liens on certain portions of the debtor's lines and the action to be taken to meet the maturity of the Bedford Belt mortgage bonds, which involves the question of the ultimate disposition of the Terre Haute lease. Further details of evidence with respect to services performed to that date are more fully set forth in *Chicago, M., St. P. & P. R. Co. Reorganization*, 233 I. C. C. 759, wherein the Commission, by division 4, fixed the maximum limits of the compensation for services rendered to January 14, 1939, at $30,000 and for expenditures incurred to that date at $6,590.29, without prejudice to the fixing of final maximum limits therefor upon further investigation. These amounts have been paid to the firm. The debtor's trustees' annual reports to the Commission show the following payments to this firm or its members: $15,000 in 1935 (to Swaine, Wood, and Swatland); $5,739 in 1936; $23,180 in 1937; and $50,867 in 1939.

Since January 15, 1939, the firm has participated in the argument before the Commission, has studied the institutional committee's plan of reorganization, prepared and filed a petition for modification thereof, and performed some routine duties. The time devoted to these services was 76¾ hours. The total time devoted to the work from May 16, 1935, has been recorded at 1,787 hours, of which 881½ hours were by partners, and 905½ by associates, the latter being nearly all by senior associates. The petition is for the maximum limits of the amounts to which the firm is entitled in addition to those already paid. The firm asserts that additional unrecorded time was spent, including examination and study of the pertinent law and necessary reading of decisions, and that the total time actually spent is estimated at approximately 3,500 hours. It further asserts that the out-of-pocket cost to the firm on this work, exclusive of the salaries of lawyers, was between $18,000 and $20,000.

The institutional committee represents a group of institutional investors holding bonds and equipment obligations of the debtor aggregating approximately $78,467,100. The committee began its activities in connection with the re-

organization on May 23, 1935. It participated in the disposition of proposals presented by the trustees regarding the manner of operation of the property of the debtor; undertook a thorough investigation of the debtor's affairs; analyzed the data presented by the debtor at hearings before the Commission; inspected the property, participated in obtaining court approval of payment of certain interest; made investigations and held conferences in regard to issuance of equipment-trust certificates, Union Station refinancing, the modification agreement, abandonments, and other matters; participated in proceedings involving questions of reorganization; prepared a plan of reorganization; obtained reopening of the proceedings; prepared for presentation evidence to support its plan; opposed the payment of the principal of the Bedford Belt bonds; opposed the petition of the preferred stockholders for reopen-
4353 ing the proceedings to submit proposals for consolidation with the Chicago & North Western Railway Company; analyzed the examiner's proposed report; filed exceptions and briefs to the examiner's proposed report; replied to exceptions of other parties; undertook investigations and conferences in preparation for argument; studied and analyzed the Commission's plan and filed a petition for modification thereof; and replied to the petitions of others for modification.

Te plan adopted by the Commission was based fundamentally on the plan of the institutional committee, but the Commission adopted a large number of modifications suggested by the debtor. No compensation for services is requested by the committee or the members of its staff, but reimbursement of the actual expenses incurred is requested.

The institutional committee retained the services of the firm of Sidley, McPherson, Austin & Burgess, which since August 1, 1935, has advised and assisted the committee in its activities. Matters requiring the attention of the firm comprised the questions of the payment of interest on the general-mortgage bonds, the formula for the segregation of earnings and expenses, the sale of abandoned property, the purchase of new equipment, the Union Station refinancing, the payment of equipment-trust obligations, the creation of equipment trusts, the payment of interest on Milwaukee & Northern bonds, the impounding of income, the allocation of property to the respective mortgages, the disaffirmance of leases, the consolidation of the debtor and

the Terre Haute, evidence as to the value of the property, insolvency as a basis for bankruptcy of the Terre Haute, the after-acquired property clause of the general mortgage, the lien of the general mortgage, the effect of rate decisions on the debtor's earnings, modification of the Commission's plan of reorganization, the payment of Bedford Belt bonds, consolidation of the debtor with the Chicago & North Western, and plans of reorganization and all questions related thereto.

The firm held conferences, made studies of the plans of reorganization, of other questions with which the firm was concerned, and of the laws relating thereto, participated in proceedings before the court and the Commission, and performed duties in connection with the proceedings. The recorded time devoted thereto by the firm was 6,484 hours, of which 3,654 hours were by senior partners and 2,830 hours by associates, but the firm states that other time not estimated was spent, which was not recorded.

The average recorded time devoted by each partner to legal work in 1937, 1938, and 1939 which could be charged to clients was 1,296 hours a year and by associates 1,539 hours a year. Time spent in traveling and in a foreign city is not included in the above unless engaged in the particular work of a client. Time spent in the general administration of the firm, in reading court decisions or statutes, in keeping up generally with the work of the profession, and general conversations, discussions, or miscellaneous reading are not included. In 1939 the expense of the firm for rent, supplies, library, taxes, and salaries for other than lawyers was $3.40 an hour of recorded time of lawyers, partners, and associates. The average salary of an associate 4354 is approximately $6,000 a year.

The Mutual Savings Bank Group Committee, hereinafter called the mutual savings committee, has participated actively in the proceedings since February 1, 1938. The committee represents mutual savings banks which hold $26,640,800, principal amount, of securities of the debtor. Its officers held conferences with respect to the plan of reorganization of the debtor during 1935 but did not become active again until February 1, 1938, when the committee intervened in the proceedings. Its counsel was active throughout the proceedings. Statistical data, including financial reports, budget estimates, and forecasts, were studied by the committee. Data bearing upon the interests

represented by the committee were analyzed and the substance thereof, with recommendations, were circulated to the savings banks, members of the group. The committee, believing that certain provisions of the Commission's plan were unsatisfactory, directed its counsel to file a petition for modification thereof. The committee opposed the reopening of the proceedings for consideration of the proposal for the consolidation of the debtor with the Chicago & North Western. Members of the committee and its secretary have served without compensation, but the committee has incurred certain expenses for which it requests reimbursement, no charge being made for the work of railroad experts.

Oliver & Donnally, counsel for the mutual savings committee, took part in the proceedings from May 29, 1935, certain preliminary work being done in contemplation of the filing of a petition in bankruptcy by the debtor. In order to avoid duplication of effort, the firm cooperated with other parties where practicable. By arrangement, counsel for the institutional committee was allowed to present the views of both groups to the court, for the positions of both committees were similar. This made it unnecessary for the mutual savings committee to engage local counsel in Chicago, except for service requirements of the court, Charles W. Paltzer being engaged for that purpose.

Matters to which counsel for the mutual savings committee devoted its attention were the institutional committee's plan, the debtor's suggested modification thereof, the Terre Haute lease, the proposed consolidation of the debtor with the Chicago & North Western, the proposed report of the examiner on a plan of reorganization, the petition of stockholders to reopen the proceedings, the plan of reorganization approved by the Commission, hearings on the plan of reorganization approved by the Commission, hearings on the plan of reorganization, briefs, oral argument, and correspondence. The time devoted to the proceedings was 1,196½ hours, of which 596 hours were by partners, and 600½ hours by senior associates, who receive salaries from $4,500 to $8,500 a year.

The National City Bank of New York and William W. Hoffman are trustees of the adjustment mortgage, which is preceded by three other blanket mortgages on the system. There are $182,873,693 of bonds outstanding under the adjustment mortgage. The trustees request compensation

for services rendered and reimbursement for expenses incurred during the proceeding from June 29, 1935. Of the bonds, $10,748,800 were represented by the institutional committee. The trustees have devoted their services to studies of the plan of reorganization filed in the pro-
4355 ceedings and of the plan proposed by the examiner, the preparation of analyses thereof, a study of the record of the proceedings before the Commission and of the new capitalization outlined in the plan approved by the Commission, and its effect on the adjustment bonds. The trustees considered various questions involved in the proceeding and collaborated with counsel in the preparation of briefs and exceptions. The amount of time devoted to the proceeding was not stated. For normal services the trustees were paid $5,000 a year up to 1930, in which year compensation was reduced to $3,000 and was further reduced in 1935 to $2,500 a year. The bonds issued under the adjustment mortgage constitute the largest single claim against the estate.

Shearman & Sterling, counsel for the National City Bank of New York and William W. Hoffman, trustees, participated in the proceedings from June 29, 1935. The questions considered by the firm comprised the procedure to be followed, the impounding of income on properties subject to the adjustment mortgage, the right to require the debtor to account for such income, the necessity for filing proof of claim, the sale and exchange of properties subject to the lien of the adjustment mortgage, the granting of easements with respect to such properties, partial payments and refinancing of equipment-trust obligations of the debtor, payment of the principal of the first-mortgage bonds and of the Bedford Belt bonds, and the release of dividends received from the Indiana Harbor Belt Railroad Company held by the trustees of the first and refunding mortgage.

The above counsel studied the plan of reorganization filed in this proceeding, the modifications thereof, the examiner's proposed plan, and the plan approved by the Commission. The firm took an active part in the proceeding on the plan through attendance and participation in hearings, studies of the record, conferences, preparation of briefs and exceptions, preparation and presentation of oral argument, and consideration of petitions for modification filed by other parties, and the preparation of answers to such parties. The firm opposed provisions of the plan

under which the issuance of additional first-mortgage bonds would be limited unless the income reached a certain level. It also opposed provision for the conversion of the new general-mortgage bonds, series B, into stock, and opposed the creation of a voting trust. The two first-named provisions were eliminated in the Commission's approved plan and the third provision was modified. The time devoted to the work by the firm was stated to be 595 hours, but was partially estimated. Of this time 150 hours were by a partner and 445 by associates, the average salary of the latter being about $8,000 a year.

Montgomery, Hart, Pritchard & Herriott, counsel at Chicago for the National City Bank of New York and William W. Hoffman, trustees, participated in the proceeding from June 29, 1935, and devoted their services largely to matters which came before the court. This firm also concerned itself with the plan of reorganization filed in the proceeding and the proposed modifications thereof generally, and with particular reference to the rights of holders of the adjustment-mortgage bonds and the rights and duties of the adjustment-mortgage trustee. It 4356 informed itself as to the financial structure of the debtor, the indenture of the adjustment mortgage, the relations of the various liens, and the status and rights of claimants and creditors. It cooperated with Shearman & Sterling, the New York counsel, with respect to necessary action on matters and controversies which arose during the proceeding.

The matters which engaged the firm's attention included the impounding of income under the mortgages, the payment of interest on Milwaukee & Northern bonds, the Railroad Credit Corporation notes and general-mortgage bonds, the extension of time for disaffirmance of leases, the payment of the principal of the equipment-trust certificates, the abandonment or acquisition of certain branch lines, the construction of industrial tracks and structures, the issuance of equipment-trust certificates, the refinancing of the Chicago Union Station bonds, the foreclosure by the Finance Corporation of the mortgage on the Bellingham Bay & British Columbia Railroad Company, the filing of claims of bondholders, the payment at maturity of the Bedford Belt bonds, the execution of leases by the debtor, the refinancing of certain equipment-trust certificates, the acquisition of new equipment and the extension of bonds of

the Minneapolis & Eastern Railway Company. The time devoted to the work, recorded at 215¼ hours, was almost entirely by partners. The firm estimates that 25 hours additional of unrecorded time was also spent.

The United States Trust Company is trustee under the general mortgage; bonds actually outstanding $138,788,000 and bonds pledged $11,212,000. It requests compensation for services rendered and reimbursement for expenses from July 1, 1935. The trustee's services included attendance at conferences prior to and preliminary to the filing of a petition in bankruptcy and immediately thereafter, an inspection of the lines covered by the general mortgage and of the Terre Haute, conferences on the debtor's plan, payment of interest on the general-mortgage bonds, and consideration of the institutional committee's plan and the modification thereof. Other matters to which the trustee devoted itself are indicated by the enumeration hereinafter of the questions that were considered by its counsel. The trustee receives no annual fee for normal services, a fixed amount for each bond having been paid when the bonds were issued.

Stewart & Shearer, counsel for the United States Trust Company, trustee, have participated in the proceeding since July 1, 1935. The more important matters which engaged the attention of the firm comprised interventions in the proceedings, the payment of interest on certain obligations, the payment of rentals under leases, acquisitions or abandonments of railroad lines, disaffirmance of leases, impounding of income under the mortgages, payment of equipment-trust maturities, negotiation of new leases, refinancing of the Chicago Union Station Company, the issuance of equipment-trust certificates, the purchase of equipment, trackage agreements, additions and betterments, consolidation of the debtor with the Chicago & North Western, the payment of Bedford Belt bonds, the consideration of plans of reorganization filed in the proceeding, attendance at hearings on same, a study of the record, 4357 briefs, the examiner's proposed plan of reorganization, and exceptions to same, oral argument, reopening of the hearing, the plan approved by the Commission, and the petitions for modification thereof. The recorded time devoted to the work by the firm was 1,091½ hours, the larger part of which was by partners. Many of the above matters concern questions before the court which were handled in

the court by the counsel in Chicago. Stewart & Shearer did not attend any of the proceedings in the court.

Wilson & McIlvaine, counsel for the United States Trust Company in Chicago, participated in the proceedings since July 25, 1935, and gave their attention exclusively to matters before the court. The questions to which they devoted their attention included petitions for intervention, payment of interest on equipment-trust and other obligations, impounding of income, acquisition, abandonment or sale of railroad lines, refinancing of the Chicago Union Station Company, and the issuance of equipment-trust certificates, the sale of certain properties subject to the general mortgage and disposition of proceeds of the sale, agreements of the debtor with coal companies, modification of leases and payment of matured obligations. The recorded time devoted to the work was 363¾ hours, of which 135½ hours were by partners and 227¾ hours by associates.

The Guaranty Trust Company of New York is trustee of the 50-year mortgage, bonds outstanding $106,395,096, this issue being preceded by one other blanket mortgage. The trustees request compensation for services rendered and reimbursement for expenses incurred from June 29, 1935. The matters which engaged the attention of the trustee comprised the payment of maturities of equipment-trust certificates, and of interest on other obligations, the acquisition of equipment, the Chicago Union Station refinancing, abandonments of property and accounting for salvage from the same, sale of property, the formula for segregation of earnings, consolidation of the debtor with the Chicago & North Western, earnings of the debtor by mortgage divisions, condemnation of the property owned by the debtor, plans of reorganization filed in the proceeding, the examiner's plan of reorganization, and the Commission's approved plan of reorganization.

The trustee mailed 15,000 circular letters giving notification of a meeting of 50-year mortgage bondholders. As a result of the meeting a protective committee for the bondholders was formed. The trustee has had conferences with representatives of the protective committee, the institutional committee, and with other bondholders, and has made a large number of replies to inquiries of bondholders. According to the estimate of the trust company, about 2,300 hours of time were devoted to the work. The trust company received for normal services as trustee $3,000 a year

to July 1, 1935, and $2,500 a year subsequent thereto. The interest of the holders of the 50-year bonds in this reorganization is very large and the treatment of these bondholders under the plan was one of the major problems in the case.

Davis, Polk, Wardwell, Gardiner & Reed, counsel for the Guaranty Trust Company of New York, participated in the proceedings from July 5, 1935. The questions to which the firm devoted its attention comprised the segregation of income of the debtor by mortgage divisions, payment of equipment-trust maturities, payments of interest on the general-mortgage and Terre Haute bonds, the purchase of equipment, petitions for impounding of income, the Chicago Union Station refinancing, the respective liens of mortgages, releases from mortgages of certain prop-
4358 erties, abandonments of property and application of the proceeds thereof, the disposition of dividends from the Indiana Harbor Belt, Bedford Belt maturity, consolidation of the debtor with the Chicago & North Western, income and capital accounts of the debtor, plans of reorganization filed in the proceedings, the examiner's plan of reorganization, the Commission's approved plan, and petitions for the modification thereof.

The above firm kept informed of proceedings before the court, although attendance at court hearings was left to the counsel at Chicago. It took an active part in the proceedings before the Commission on the plan of reorganization. The institutional committee represented less than 10 percent of the 50-year mortgage bonds and the protective committee for the 50-year bonds organized in 1938 represented less than 9 percent of these bonds. The Guaranty Trust Company felt compelled to represent the remaining bonds of the mortgage. Counsel has been in constant touch with the protective committee since its formation. The time devoted to the work by the firm was recorded at 1,330¾ hours, but 165 additional hours were estimated. Of the recorded time 655¾ hours were by partners and 675 hours by associates.

Tenney, Harding, Sherman & Rogers, counsel at Chicago for the Guaranty Trust Company, participated in the proceeding from August 19, 1935. Their services were devoted entirely to matters before the court. The questions enumerated above to which Davis, Polk, Wardwell, Gardiner & Reed devoted their attention and which came before the court were handled therein by Tenney, Harding, Sherman & Rogers. The time spent on the work by the latter firm

was 214¾ hours, of which 35¾ hours were by partners and the remainder by associates.

The Chemical Bank & Trust Company is trustee of the first and refunding mortgage, total bonds $9,866,000, of which $8,923,000 are pledged and $943,000 held in the treasury. It requests compensation for services rendered and reimbursement for expenses incurred from June 29, 1935. Counsel for the Finance Corporation during the proceeding advised the above trustee that it would be expected to protect the interests of the Finance Corporation as holder of the bonds to the same extent as if they were held by the public. The trustee has followed the reorganization proceeding actively and cooperated with the Finance Corporation, endeavoring so far as possible, to avoid duplication of services. Upon filing of the petition in bankruptcy, the trustee made an examination of the default provisions of the mortgage, and determined the action that was called for. The files of the trustee were reviewed and an analysis of the situation prepared.

The matters which engaged the particular attention of the trustee comprised filing proofs of claim, transfer into the name of a nominee of the trustee of all stock pledged under the first and refunding mortgage, the sale by quitclaim deed of small parcels of property of the debtor without obtaining releases from the lien of the mortgage and the disposition of the proceeds thereof, payment of maturities of Bedford Belt bonds and of interest on Terre Haute bonds pledged under the first and refunding mortgage, extension of maturity of refunding mortgage bonds of the Minneapolis Eastern Railroad Company pledged with the trustee, priorities of liens of certain mortgages, plans of reorganization filed in the proceeding, including the examiner's plan and the Commission's approved plan.

4359 The trustee receives $1,300 a year for normal services. No record was made of the amount of time devoted to the work.

Wright, Gordon, Zachry & Parlin, counsel for the Chemical Bank & Trust Company, trustee, participated in the proceeding from July 1, 1935. Counsel took action to obtain for the trustee all rights in the collateral under the first and refunding mortgage, including interest, dividends, and voting rights, transfer of stock collateral to the trustee, and the segregation of earnings of such collateral for the benefit of the mortgage trustee. Payment at maturity of bonds of the Bedford Belt and of past due interest on the

Terre Haute, filing proof of claim, consideration of each petition filed in the proceeding, intervention in the proceeding before the Commission, analysis of the value of the first and refunding bonds, and of collateral pledged under the mortgage, plans of reorganization filed in the proceeding, including the examiner's plan and the Commission's approved plan, were some of the matters which engaged the attention of counsel. The firm made no appearance in the court in Chicago, but kept in touch with the court proceeding. It participated actively in the proceeding before the Commission, including the presentation of evidence. According to the office record of the firm, 497½ hours were spent on the work, of which 475½ hours were by members of firm and senior associates, and 22 hours by junior associates.

D'Ancona, Pflaum, and Kohlsaat, Chicago counsel for the Chemical Bank and Trust Company, participated in the proceeding before the court, beginning January 11, 1936. The firm filed a petition of intervention in the court, examined all motions and petitions filed in the court proceeding, determined the necessary action, forwarded papers to New York counsel, and appeared in court when necessary. The following problems were the principal matters which engaged the attention of the firm: Granting of easements, leases of property, sales of property by quit-claim deed, sales of property free and clear of encumbrances, segregation of funds received from granting of easements or sales of property, release of funds in the possession of the mortgage trustees, payment of interest and dividends on securities held by the mortgage trustees, payment of principal of the Bedford Belt bonds, and other miscellaneous matters. The firm kept in constant communication with the New York counsel and with other attorneys in the proceeding. It devoted 271 hours to the work, of which 253 hours were by members of the firm, and 18 hours by associates.

The City Bank Farmers Trust Company is trustee under the first mortgage and the consolidated mortgage of the Milwaukee & Northern Railroad Company, bonds outstanding $2,155,000, and $5,092,000, respectively. Of these, $38,000 of the first-mortgage bonds and $20,000 of the consolidated mortgage bonds are pledged under the debtor's first and refunding mortgage. The above issues were assumed by the debtor when it acquired the property subject to the lien. The trustee requests compensation for services

rendered and reimbursement for expenses incurred since June 29, 1935. It has kept in touch with the proceedings in the court and has participated actively in the proceedings before the Commission. A study of the record before the Commission was made, including the plans of reorganization, and brief and exceptions filed therein. Throughout the proceeding the trustee has been required to exercise
4360 judgment with respect to many difficult problems which has required the continuous attention of one or more of its officers with respect to the administration of the property under the supervision of the court, and has been required to keep in touch with the proceedings before the Commission on plans for reorganization. It received $550 a year for normal services to the date of the filing of the petition in bankruptcy, since which date it has received nothing. The compensation requested does not include payment for such normal services.

Feeling the need of expert assistance in preparing a severance study and in verifying the correctness of earnings segregations contained in certain studies in the record before the Commission, as well as the formula upon which they were based, the trustee employed Lawrence Richardson, mechanical assistant to the vice president and general manager of the Boston & Main Railroad, to undertake these studies. This involved studies of earnings, valuation of equipment, necessary capital investment, cost of renting foreign equipment, effects on traffic, the use of lake coal instead of Terre Haute coal, the effects of severance and possible purchasers or lessees of the Minneapolis & Northern property. Richardson spent 25 days on the work, which included the preparation of material for introduction at a subsequent hearing before the Commission, and the time required for consultations, and as a witness at the hearing where he testified.

Mitchell, Taylor, Capron & Marsh, counsel in New York for the City Bank Farmers Trust Company, participated in the proceeding from July 10, 1935. The principal matters to which this firm gave its attention were the accounting for income from property under the Minneapolis & Northern mortgage, impounding petitions relating to such income, the sale, lease, or granting of easements of property subject to the lien of the mortgage, trackage arrangements and unification agreements relating to such property, filing proofs of claim, plans of reorganization in the proceeding, payment of interest on bonds of the mortgage,

extension of bonds formerly having the right of extension, segregation of income studies, improvement budgets, classification of creditors, abandonments, purchase of new equipment, creation of equipment trusts, mortgage liens, payment at maturity of the Bedford Belt bonds, consolidation of the debtor with the Chicago & North Western, the examiner's proposed plan, and the Commission's plan of reorganization. The firm participated in all phases of the proceeding befor the Commission. According to its records, 1,136¾ hours of time were spent on the work, of which 585¼ hours were by partners, and 551½ hours by associates, mostly senior associates. It estimates that 10 percent to 15 percent additional time not recorded was also spent. On the basis of an average of 1,300 hours of recorded time for each lawyer a year, the firm estimates that overhead amounts to $4.05 a lawyer hour. The hourly compensation of recorded time of associates is estimated to be $6.25 to $6.50.

The above firm states that in its request for compensation it has followed the rule laid down in *In re Osofsky*, 5 Fed. 2, 925, that the following elements should be considered in determining a fair fee: (1) The time
4361 which is fairly and properly to be used in dealing with the case, because this refers to the amount of work necessary; (2) the quality of skill which the situation facing the attorney demanded; (3) the skill employed in meeting that situation; (4) the amount involved, because that determines the risk of the client, and the commensurate responsibility of the lawyer; (5) the result of the case, because that determines the real benefit to the client; and (6) the eminence of the lawyer at the bar or any specialty in which he may be practicing.

Winston, Strawn & Shaw, counsel at Chicago, for the City Bank Farmers Trust Company, participated in the proceeding from August 17, 1935. The firm represented the trust company in the court at Chicago. It conferred with other parties in interest in the proceeding, gave attention to all notices with respect to motions and petitions with special reference to any effect on the mortgage represented by counsel, attended hearings in the court, gave its attention to correspondence, and kept its associate counsel in New York informed with respect to matters of interest in the proceeding. The principal matters to which the firm gave its attention in the court were those named above in connection with the services of its associate counsel and

that were considered by the court. The total time devoted to the work was 382½ hours, of which 172¼ hours were by senior partners and 210¼ hours by associates.

St. Louis Union Trust Company, petitioner, is co-trustee with the Illinois State Trust Company under the first mortgage of the Chicago, Milwaukee & Gary, bonds actually outstanding $3,000,000, and pledged $2,700,000. Petitioner rendered services and incurred expenses during the proceeding, for which compensation and reimbursement are requested. The Illinois State Trust Company does not request allowances. Default of interest on the bonds having occurred, petitioner and its co-trustee intervened in the proceeding. The petitioner gave its attention to the plans of reorganization filed in the proceeding and made objections thereto. It filed proof of claim, investigated the matter of the disposition of property subject to the lien of the mortgage which had been disposed of without proper accounting for the proceeds thereof to the trustees under the mortgage, examined the question of the release of items of real estate subject to the mortgage, and gave its attention to petitions and briefs filed, and orders of the court in connection with the proceeding.

Bryan, Williams, Cave & McPheeters, counsel at St. Louis Mo., for the St. Louis Union Trust Company and the Illinois State Trust Company, rendered services during the proceeding from June 14, 1935. This firm devoted itself principally to a study of all matters relating to the issuance and validity of the Chicago, Milwaukee & Gary bonds; an examination of the records and proceedings of the court; filing of proof of claim; participation in the proceeding before the Commission by filing briefs and exceptions, oral argument, and objections to the Commission's plan; investigation of the records and facts with respect to sales of property, appropriations of personal property by the debtor and their effect on the lien of the mortgage;
4362 and investigation of the numerous questions of law in the proceeding. The time devoted to the work was 340¼ hours, and the firm states that in addition 10 days were spent out of the city. Of this time, 185 hours and 5½ days, respectively were by partners and the balance by associates.

The protective committee for holders of 50-year mortgage bonds and William Church Osborn, petitioners, rendered services and incurred expenses during the proceeding. In

Chicago, M., St. P. & P. R. Co. Reorganization, 228 I. C. C. 180, the protective committee was authorized to serve pursuant to section 77(p) of the Bankruptcy Act. A total of $8,600,000 of bonds were represented by the committee at the first meeting of bondholders. William Church Osborn owns $102,000 of the bonds. Petitioners requested only reimbursement for expenses incurred and fees of attorneys, making no claim for services rendered by members of the committee or by Osborn.

Hodges, Reavis, Pantaleoni & Downey, counsel at New York for the above protective committee and Osborn, rendered services from October 13, 1937. They made a study of the record in the proceeding and other records relevant to the position of the 50-year bonds, considered problems relating to the organization of the protective committee, and solicitations of authorizations from bondholders, drafted petitions, answers, and other legal papers, prepared briefs, made a study of documents filed by other parties, prepared reports and analyses of documents and plans of reorganization, held conferences, investigated legal problems, prepared for and attended hearings, gave attention to the defaults under the various mortgages, and their effect on the 50-year bonds, and performed other duties in connection with the reorganization. The records of the firm show that 924¼ hours were devoted to the work, of which 695¼ hours were by partners and 229 hours by associates.

Malcolm Mecartney, of Chicago, Ill., performed legal services for the protective committee for holders of 50-year bonds from June 20, 1938. He attended hearings in the court for the committee, held conferences, conducted correspondence, and made reports to the New York counsel of the committee. The principal matters to which he gave his attention were the payment of the Bedford Belt bonds, the consolidation of the debtor with the Chicago & North Western, records of earnings of the debtor, intervention in the proceeding, filing of claims of bondholders, and payment of equipment-trust certificates. He devoted 23¾ hours of time to the work.

Samuel W. McIntosh, of Washington, D. C., performed legal services for the protective committee for holders of 50-year bonds from January 31, 1938, in connection with proceedings before the Commission on the plan of reorganization. He attended hearings, performed services for the committee in connection with intervention in the proceed-

ing, held conferences, and made reports to the New York and Chicago counsel. These services consumed three days for attendance at the Commission's hearings, two days of conferences, and approximately one-half day for office correspondence and reports.

George H. Parker was retained as technical adviser by the protective committee for 50-year bonds and testi-
4363 fied as an expert accountant on the plan of reorganization before the Commission. He was paid fees at the approximate rate of $50 a day, although he worked five additional days without pay. His researches were the foundation for the organization of the committee in connection with the plan. A considerable part of his work was done in cooperation with the accounting staff of the debtor.

H. G. Moulton, retained as a technical adviser by the protective committee for 50-year bonds, had been connected with the engineering firm of Coverdale & Colpitts, and had made a survey of the debtor system in 1925-27. He had knowledge of the debtor's affairs and other experience which made it expedient to retain him. He spent five or six days on the work.

J. L. White, an expert accountant, who had some special experience in regard to the lines west in connection with the consolidation with the Chicago & North Western, was retained as a technical adviser by the protective committee for 50-year bonds. He testified at a hearing before the Commission principally about traffic in connection with the proposed consolidation and spent approximately a week on the work.

Joseph R. Warner, retained as an expert technical adviser by the protective committee for 50-year bonds, was instrumental in mapping the whole program for the committee to follow. He advised particularly with respect to problems on which the recommended that no time be wasted by the committee, and was paid approximately $75 a day. His advice with respect to such problems was a saving of the time of the committee.

A group of holders of Chicago, Terre Haute & Southeastern Railway Company first and refunding 5-percent bonds, rendered services and incurred expenses during the proceeding, and was permitted to intervene before the Commission on January 25, 1939, after the examiner's report was issued. At that time it represented about $750,000 of bonds. Aside from organization of the group and the for-

mation of a committee organized on May 17, 1940, activities were principally by its counsel. Only reimbursement of expenses of the group and fees of counsel are requested.

Hunt, Hill & Betts, counsel for the above group, participated in the proceeding before the Commission. They made a number of studies and prepared a brief and took part in oral argument on the examiner's report in opposition to the cancelation of the lease of the Chicago, Terre Haute & Southeastern, consolidation of the latter with the debtor, and disturbance or modification of the rights of the holders of bonds. The Commission in its plan did not require a consolidation of the properties, but included other provisions objectionable to the group, and the firm filed a petition for modification of the Commission's report. It also engaged extensively in consultations with bondholders in the various cities, and prepared numerous drafts of protective committee agreements, resulting in the organization of the committee of bondholders. It devoted 662 hours of time to the work, of which 521 hours were by partners and 141 hours by associates, who received salaries of about $2,500 a year. Additional time not recorded, amounting to ap-
4364 proximately 75 hours, was also spent, counsel stated.

The protective committee for holders of preferred stock of the debtor rendered services and incurred expenses during the proceeding. Reimbursement for expenses is requested. In *Chicago, M. St. P. & P. R. Co. Reorganization*, 224 I. C. C. 219, the protective committee was authorized to serve pursuant to section 77(p) of the Bankruptcy Act. Organization of the committee was begun in July, 1937, and the first meeting held on August 30, 1937. The committee has received authorizations from 1,151 stockholders, holding 76,410 shares of preferred stock. Robert E. Smith was selected as secretary of the committee, and was succeeded on April 1, 1938, by Broadus J. Clark. The committee devoted its efforts primarily to a consolidation of the debtor with the Chicago & North Western. A plan of reorganization was filed in the proceeding before the Commission, based on such consolidation. A hearing was held on the plan, but the Commission did not approve the consolidation. The committee has kept informed of railroad matters and intends to argue in the court against the approval of the plan of reorganization approved by the Commission.

The allowance requested for the services of Smith as secretary of the committee is $1,660 for nine months' work,

or at the rate of approximately $184 a month. The allowance requested is for part-time services, it being contemplated that additional claims will be made in connection with other reorganization proceedings before us. The claim covers services for two months, July and August, 1937, before Smith was appointed secretary of the committee. Pending a showing that the total allowances claimed for services in connection with all such proceedings are reasonable, we are of the view that we should approve at this time only an interim allowance equal to $100 a month as compensation for his services as committee secretary and $25 a month for his expenses, both for a period of seven months. This treatment is consistent with our similar action fixing an interim allowance for Smith in the proceedings for reorganization of the Chicago & North Western Railway Company, ... I. C. C. ...... We have assigned for further hearing the matter of Smith's petitions for compensation and reimbursement of expenses in this proceeding, in the Chicago & North Western Railway Company reorganization and in the Missouri Pacific Railroad Company reorganization, Finance Docket No. 9918. We are unable to fix a final maximum for Smith's allowances in these proceedings until conclusion of the hearing and consideration of that record.

The services of Broadus J. Clark, successor to Smith as secretary, extended over a period of 25½ months.

Edward R. Johnston and Albert K. Orschel, of the firm of Poppenhusen, Johnston, Thompson & Raymond, are counsel for the protective committee for holders of preferred stock of the debtor, and performed services from July 21, 1937. They took part in numerous conferences, advised the committee with respect to its organization and functioning, took part in the hearing before the Commission for authorization of the committee to serve, studied the financial condition of the debtor, presented testimony in support of the consolidation of the debtor with the Chicago & North Western at hearings before the Commission,

4365 presented exceptions to the examiner's report, and argued for the plan of consolidation before the Commission. Time devoted to the work by them is recorded at 1,014 hours, of which 986 hours were by partners and 28 hours by associates. In addition, 50 hours of time is estimated to have been spent.

William W. Wakefield was special technical adviser for the protective committee for holders of preferred stock,

He was retained on account of having previously prepared a report on the debtor. He made a study of the financial situation of the debtor, the condition of its property, and the savings which could be obtained through its consolidation. His testimony on consolidation was given at a hearing before the Commission. Thereafter, he conducted his studies on consolidation and reorganization, cooperating and conferring with the counsel for the committee with respect thereto. The time devoted to the work by Wakefield and assistants was 2,088 hours, or 261 days. Of the latter, 217 days were by Wakefield, for which compensation is requested at $75 a day, and 44 days were by assistants, for which compensation is requested at $25 a day. The study for consolidation covered both the Milwaukee and the Chicago & North Western. In our opinion, the allowance approved in the North Western case plus the amount which the committee has paid in the Milwaukee case will constitute a fair and reasonable allowance for Wakefield for his services as a whole.

The independent committee for bondholders of the debtor requests allowance of compensation for services rendered and reimbursement for expenses incurred. The committee was formed in July, 1935, and represented $125,000 of bonds at that date owned by eight parties. The committee conducted correspondence, pursued investigations, made financial and operating studies, assembled facts, and prepared analyses for use by counsel. It kept informed of the progress of the reorganization, distributed printed and other reports to security holders of the debtor, and answered inquiries. The committee takes the position that its members have rendered expert services of an accounting and financial character. It kept no record of time spent by members on the work, but met with counsel on 40 separate days, totaling 84 hours, and estimates that this was about one-half of the time spent by the members. Under subsection (c)(12) of section 77, the actual and reasonable expenses of a committee may be paid from the debtor's estate, but no provision is made for the compensation of members of a committee. The Commission, accordingly, has heretofore found that it has no right to fix maximum allowances of compensation for committee members, and none will be fixed in this case.

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Julius Weiss, counsel for the independent committee, of the firm of Kadel, Sheils & Weiss, of New York, rendered services and incurred expenses during the proceeding from

July 15, 1935. The compensation requested includes compensation for Edgar Bernhardt, counsel at Chicago, and Sherman Minton, counsel of New Albany, Indiana, who advised Weiss with respect to proceedings before the court. Weiss's services were devoted to investigations and examinations of the facts, consideration of practical and legal problems arising during the reorganization, formulation and preparation of petitions, preparation of a proposed plan, briefs, exceptions, and other documents on behalf of the committee, examination of applications, briefs, plans and exceptions, filed by parties in the proceeding, reports and orders of the Commission and its examiners, attendance and participation at hearings before the Com-
4367 mission on the plan of reorganization, attendance at hearings before the court on the appointment of trustees, communications, conferences and advice to members of the committee. He contends that the principles held by the committee on a plan of reorganization prevailed in the final plan with respect to the amount of the capital structure, the amount of the new debt, the appointment of reorganization managers, and the appointment of the directors of the reorganized company. His total recorded time, a partner in his firm, was 649 hours. He also estimates that approximately 325 hours additional were spent by associates who received from $35 to $60 a week.

The independent committee represented a comparatively small interest. Its counsel contributed very little to the proceeding and his allowance should be substantially less than the amount of his claim. Voluntary, gratuitous services rendered by attorneys for creditors or committees in the administration of the estate should not be compensated out of the estate. *In Re Paramount-Publix Corp.*, 12 F. Supp. 823; *In Re New York Investors*, 79 F. (2d) 182; *In re Eureka Upholstering Co.*, 48 F. (2d) 95. Counsel's services were of little benefit to the estate, except possibly in the matter of the appointment of trustees.

Guggenheimer & Untermyer, of New York, and Sabath, Perlman, Goodman & Rein, of Chicago, petitioners, took part in the proceeding from July 6, 1935 before the court, and the Commission as counsel for the Anglo-Continentale Treuhand, A. G., which owned unextended Milwaukee & Northern bonds, $100,000 of the consolidated mortgage, and $1,000 of the first-mortgage bonds. Petitioners intervened and took part in the proceedings before the court and the Commission, examined and analyzed reports of

the debtor's operations with specific reference to the Milwaukee & Northern, attended hearings before the Commission, filed exceptions to the examiner's report, and presented oral argument. In the court the petitioners took part in legal controversies regarding classification of claims, payment of interest to holders of unextended Milwaukee & Northern bonds, and payment of interest on other bonds. They obtained an agreement for the extension of the unextended Milwaukee & Northern bonds, and for payment of interest on such bonds and endeavored to have income of the Milwaukee & Northern segregated and sequestered. From the inception of the proceedings they examined and kept informed concerning the record thereof, and had conferences and correspondence with parties of record and others. No accurate diary entries of time spent by Guggenheimer and Untermyer were kept, but they estimated that not less than 8 days were spent away from the office of the firm, and in addition, not less than 547½ hours, or a total of 621 hours were devoted to the work, all by associates. In addition, there was said to be some unrecorded time. The time spent by Sabath, Perlman, Goodman & Rein is recorded at 301¼ hours, and the firm estimates that 150 additional hours were spent. Of the 451¼ hours, the firm estimates that 300 hours were by partners.

The above counsel made some contribution that was of benefit to the estate of the debtor, but their services were largely in the interest of a particular owner of bonds and to a large extent are not found to have been of benefit to the estate. The value of their services should be fixed accordingly.

The Imperial Trust Company, Limited, John Roth, and Francis W. Keeler, petitioners, are holders of $87,000 of unextended Milwaukee & Northern consolidated mort-
4368 gage bonds. These petitioners were advised by counsel that a diversify of interest might arise in the proceeding between holders of extended bonds and holders of unextended bonds, that the trustee under the mortgage could not serve equitably the holders of both classes of bonds, and that a classification of claims had been made which failed to take cognizance of the rights of petitioners' bonds. Accordingly, the petitioners intervened in the proceedings before the court and the Commission. Allowances requested are only for compensation of counsel and for disbursements.

Thomas F. Murphy, of New York, was first employed as counsel for the above petitioners and rendered services from August, 1935, to March 27, 1937. He prepared petitions for intervention before the court and the Commission, participated in hearings before the Commission commencing August 5, 1935, prepared papers, and took part in court on the questions of the extension of the unextended consolidated bonds and of the payment of interest on the general-mortgage bonds; attended conferences, and conducted correspondence. The estimated time devoted to the work was 448 hours.

Jack E. Bagon, of New York, succeeded Murphy as counsel for the petitioners and rendered services from June, 1937, to December, 1938. He participated in hearings before the Commission, filed exceptions to the examiner's report on a plan of reorganization, prepared objections and exceptions to the classification of claims in the court, and rendered other services. The estimated time devoted to the work was 208½ hours.

McDonald & Richmond, of Chicago, rendered services as associate counsel for the above petitioners from April 9, 1937, to December 19, 1938. Counsel attended conferences, prepared and served motions, petitions and notices in the court, and conducted correspondence. The estimated time devoted to the work was 84½ hours.

Shulman, Shulman & Abrams represent holders of $81,500 of convertible adjustment-mortgage bonds, and performed services and incurred expenses from July 18, 1935. They intervened in the proceeding before the court and the Commission, participated in hearings before the Commission on a plan of reorganization, filed exceptions to the report of the examiner on a plan, and filed a petition for modification of the Commission's plan. They participated in the court proceedings on the question of the appointment of trustees, examined notices, motions, and petitions, and appeared in court whenever necessary. They state that their efforts were primarily responsible for the abandonment of the first plan, and the abandonment of the proposal for a voting trust. We are not persuaded that the evidence supports such a statement. The firm submitted a statement showing the matters attended to on specific dates, but had no statement of time spent on the work. Its estimate of the time spent is 1,000 hours. We find that the services rendered were of no benefit to the estate.

The Finance Corporation requests allowances for reimbursement of expenses during the proceeding, including services of special counsel, no request being made for compensation for attorneys on the staff of that corporation. The expenditures of the corporation were for transportation of attorneys of the staff to Chicago and New York, and for printing and transcripts of the record in the proceeding.

Brobeck, Phleger & Harrison, of San Francisco, were special counsel of the Finance Corporation in connection with the suit by that corporation against the Belling-
4369 ham Bay & British Columbia Railroad Company in order to prevent the State statute of limitations from running against that company's obligations. They rendered services and incurred expenses from January 15, 1937, to March 19, 1940. The recorded time devoted to the work was 24 hours and 55 minutes, of which 7 hours and 25 minutes were by senior attorneys and 17½ hours by junior attorneys.

Carter, Ledyard & Milburn rendered services as counsel to the Manufacturers Trust Company, successor trustee of equipment trust, series A, from July 18, 1935, to July 24, 1939. They prepared proof of claim, examined applications, petitions and orders in the court, examined the report of the examiner on a plan of reorganization, and made studies in connection with remedies for the failure to replace equipment under the equipment trust agreement. The time devoted to the work was 38¾ hours.

Compensation of all claimants.- In fixing the maximum limits of allowances to be paid out of the debtor's estate, we will give consideration, among other things, to the benefits derived by the debtor's estate from the several services performed. In view of the clear duplication of effort involved in the examination and review of the same matters by a large number of the parties, and the numerous conferences of many parties, which the statements of services disclose, we are satisfied that not all of the services rendered may properly be considered as entitled to a full measure of compensation from the estate. Our conclusions in this respect reflect also our views as to the reasonable total cost to the estate for what, up to the date covered by the petitions, had been accomplished in the reorganization of the debtor, considering the size of the estate, the complicated nature of its financial structure, the period covered by the trusteeship, and the time devoted by the parties to

the proceeding. We have also considered the eminence of counsel participating in the proceeding.

Moreover, the compensation claims of the several petitioners represent their personal and self-interested judgments as to the value of their respective services, and, of course, we are not bound to accept, without any modification whatever, those judgments, even though all of the services of a particular individual might have been rendered wholly for the benefit of the estate and free from any motivation by self-interest. Otherwise, the statutory requirement that the Commission fix maximum limits of allowances would be rendered nugatory. Mere participation in hearings, offering advice, suggestions, or criticism of themselves furnish no basis for allowance. *In re Paramount Public Corp.*, 2 Cir., 75 Fed. 2nd 588, certiorari denied *Paramount* v. *Publix Corp.*, 300 U. S. 655.

The total of the allowances hereinafter stated as the maximum fixed by us as reasonable for each of the petitioners is $312,624. This we find from a consideration of the foregoing factors, and of all other relevant facts and circumstances, including those set out in the petitions and in this report, and from a consideration of them, with respect to the claims of each individual petitioner, to be a reasonable total maximum limit for the services rendered by the petitioners up to May 15, 1940, as covered by the petitions.

4370 Expenses of all claimants. Certain claims for expenses were filed by the protective committee for preferred stock and the mutual savings committee subsequent to the date fixed by the court for filing claims but such claims have been recognized herein.

The exhibit showing the expenses of the chairman of the institutional committee indicates that $11 was erroneously included in the statement first filed and there is an apparent duplication of another charge of $60. Accordingly, the sum of $71 is deducted from the total claim and the allowance approved.

Sidley, McPherson, Austin & Burgess, counsel for the institutional committee, filed claims for traveling expenses of $4,510. Burgess frequently traveled with a member of that firm to attend committee meetings and conferences in New York, and John Dern, of his office, disbursed $143.67 to attend hearings before the Commission on a plan for reorganization of the Missouri Pacific Railroad Company. The per diem subsistence expenses of Burgess were in ex-

cess of a reasonable amount. We find that the traveling expenses of the above firm reasonably chargeable to the debtor's estate should be $960 less than the total claimed.

Conclusions.

We conclude:

1. That in view of the nature and extent of the services rendered, the contributive value thereof, and the benefit therefrom accruing to the debtor's estate, we should fix the following maximum limits of final allowances to be paid out of the debtor's estate to the petitioners and claimants, as hereinafter indicated, as reasonable compensation for all services rendered and as reimbursement for all actual and reasonable expenses incurred by them in connection with the proceedings and plan of reorganization of the debtor to May 15, 1940, such allowances to cover any office or other overhead expenses in connection with such services, without prejudice to further allowances of fees and expenses for periods subsequent thereto upon appropriate supplemental petitions:

(a) For services rendered by H. E. Byram, chairman of the board of directors of the debtor, nothing.

(b) For services rendered and expenses incurred by Cravath, deGersdorff, Swaine & Wood, counsel for the debtor, $40,000 and $6,682, respectively.

(c) For expenses incurred by the institutional committee, representing a life insurance group, $12,967; for services rendered and expenses incurred by Sidley, McPherson, Austin & Burgess, its counsel, $70,000 and $9,876, respectively.

(d) For expenses incurred by the mutual savings committee, representing the Mutual Savings Bank group, $948; for services rendered and expenses incurred by Oliver & Donally, its counsel, $12,000 and $1,337, respectively; and for services rendered by Charles W. Paltzer, its counsel, $125.00.

(e) For services rendered and expenses incurred by the National City Bank of New York and William W. Hoffman, as mortgage trustees, $9,000 and $285, respectively; for services rendered and expenses incurred by Shearman & Sterling, their counsel, $6,500 and $480, respectively; and for services rendered by Montgomery, Hart, Pritchard & Herriott, their counsel, $2,500.

(f) For services rendered and expenses incurred by

the United States Trust Company of New York, as
4371 mortgage trustee, $10,000 and $257, respectively; for services rendered and expenses incurred by Stewart & Shearer, its counsel, $9,000 and $949, respectively; and for services rendered by Wilson & McIlvaine, its counsel, $2,500 and $110, respectively.

(g) For services rendered and expenses incurred by the Guaranty Trust Company of New York, mortgage trustee, $12,000 and $1,553, respectively; for services rendered and expenses incurred by Davis, Polk, Wardwell, Gardiner & Reed, its counsel, $12,000 and $1,210, respectively; and for services rendered and expenses incurred by Tenny, Harding, Sherman & Rogers, its counsel, $2,000 and $49, respectively.

(h) For services rendered by the Chemical Bank & Trust Company, as mortgage trustee, $3,000; for services rendered and expenses incurred by Wright, Gordon, Zachry & Parlin, its counsel, $5,000 and $360, respectively; and for services rendered and expenses incurred by D'Ancona, Pflaum & Kohlsaat, its counsel, $2,000 and $102, respectively.

(i) For services rendered and expenses incurred by the City Bank Farmers Trust Company, as mortgage trustee, $5,000 and $472, respectively; for services rendered and expenses incurred by Mitchell, Taylor, Capron & Marsh, its counsel, $10,000 and $828, respectively; for services rendered and expenses incurred by Winston, Strawn & Shaw, its counsel, $3,500 and $138, respectively; and for services rendered and expenses incurred by Lawrence Richardson, its technical adviser, $1,450 and $179, respectively.

(j) For services rendered and expenses incurred by the St. Louis Union Trust Company, as mortgage trustee, $3,000 and $327, respectively; and for services rendered and expenses incurred by Bryan, Williams, Cave & McPheeters, its counsel, $3,500 and $420, respectively.

(k) For expenses incurred by the protective committee for the 50-year bonds and William Church Osborn, representing holders of those bonds, $635 and $45, respectively; for services rendered and expenses incurred by Hodges, Reavis, Pantaleoni & Downey, their counsel, $12,000 and $1,332, respectively; for services rendered by Malcolm Mecartney, their counsel, $475; for services rendered by Samuel W. McIntosh, their counsel, $250; for services rendered and expenses incurred by George H. Parker, their technical adviser, $2,625 and $502, respectively; for serv-

ices rendered by H. E. Moulton, their technical adviser, $500; for services rendered and expenses incurred by J. L. White, their technical adviser, $500 and $49, respectively; and for services rendered by Joseph R. Warner, their technical adviser, $500.

(l) For expenses incurred by the Terre Haute group, representing holders of first and refunding mortgage bonds of the Chicago, Terre Haute & Southeastern, $769; and for services rendered and expenses incurred by Hunt, Hill & Betts, its counsel, $6,000 and $639, respectively.

(m) For services rendered by the protective committee for preferred stock, nothing; and for expenses incurred by such committee $1,802; for services rendered and expenses incurred by Robert E. Smith, its secretary; $700 and $175, respectively, as an interim allowance only; for services rendered by Broadus J. Clarke, its successor secretary, $750; for services rendered and expenses incurred by Edward R. Johnston and Albert K. Orschel, its counsel, $5,000 and $619, respectively; and for services rendered and expenses incurred by William W. Wakefield, its technical adviser, $1,875 and $331, respectively.

4372 (n) For services rendered by the independent committee for protection of the debtor's bondholders, nothing; and for services rendered and expenses incurred by Julius Weiss, its counsel, $1,500 and $826, respectively.

(o) For services rendered and expenses incurred by Guggenheimer & Untermyer and Sabath, Perlman, Goodman & Rein, counsel for the Anglo Continentale Treuhand, A. G., holder of bonds, $5,000 and $467, respectively.

(p) For expenses incurred by the Imperial Trust Company, Limited, John Roth, and Francis W. Keeler, holders of bonds, $75; for services rendered and expenses incurred by Thomas F. Murphy, their counsel, $560 and $346, respectively; for services rendered and expenses incurred by Jack E. Bagon, their counsel, $365 and $77, respectively; and for services rendered by McDonald & Richmond, their counsel, $220.

(q) For services rendered and expenses incurred by Shulman, Shulman & Abrams, representing holders of the debtor's bonds, nothing.

(r) For expenses incurred by the Finance Corporation, $953; and for services rendered and expenses incurred by Brobeck, Phleger & Harrison, its counsel, $205 and $12, respectively.

(s) For services rendered by Carter, Ledyard & Mil-

burn, counsel for the Manufacturers Trust Company, mortgage trustee, $300.

2. That payments should be made to the petitioners and claimants (or their personal representatives) rendering the services and incurring the expenses as indicated in the foregoing subparagraphs (a) to (s), inclusive, except that in cases where counsel and technical advisers have already been paid by their principals in whole or in part, the amounts payable from the debtor's estate should be payable to such principals to such extent only that the principals have paid their counsel and technical advisers.

3. Since, as hereinbefore stated, the petitions cover generally the period terminating on May 15, 1940, without prejudice to the right to file further petitions with respect to periods subsequent thereto, we should retain jurisdiction to determine after further investigation upon the filing of supplemental petitions the ultimate maximum limits of allowances to the conclusion of the reorganization proceedings.

An appropriate order will be entered.

4373 Order

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 2d day of October, A. D. 1940.

* * (Caption—10882) * *

Investigation of the matters and things involved in the petitions filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, in proceedings No. 60463, pending therein for the reorganization of The Chicago, Milwaukee, St. Paul & Pacific Railroad Company, debtor, and pursuant to Order No. 655 of said court in that proceeding, as referred to in the report issued herewith, for allowances of compensation for services rendered and expenses incurred in connection with the proceedings and plan of reorganization having been made, a hearing having been held, and the division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the following sums be, and they are hereby, fixed as the final maximum limits of final allowances to be paid out of the estate of the debtor as reasonable compensation for all services rendered, and as reimbursement for all actual and reasonable expenses incurred by the petitioners and claimants in connection with the proceedings and plan of reorganization of the debtor, such allowances to cover any office or other overhead expenses in connection with such services to May 15, 1940, without prejudice to further allowances of fees and expenses for periods subsequent thereto upon appropriate supplemental petitions:

(a) For services rendered by H. E. Byram, chairman of the board of directors of the debtor, nothing.

(b) For services rendered and expenses incurred by Cravath, de Gersdorff, Swaine & Wood, counsel for the debtor, $40,000 and $6,682, respectively.

(c) For expenses incurred by the institutional committee, representing a life insurance group, $12,967; for services rendered and expenses incurred by Sidley, McPherson, Austin & Burgess, its counsel, $70,000 and $9,876, respectively.

(d) For expenses incurred by the mutual savings committee, representing the Mutual Savings Bank group, $948; for services rendered and expenses incurred by Oliver & Donnally, its counsel, $12,000 and $1,377, respectively; and for services rendered by Charles W. Paltzer, its counsel, $125.

(e) For services rendered and expenses incurred by the National City Bank of New York and William W. Hoffman, as mortgage trustees, $9,000 and $285, respectively; for services rendered and expenses incurred by Shearman & Sterling, their counsel, $6,500 and $480, respectively; and for services rendered by Montgomery, Hart, Pritchard & Herriott, their counsel, $2,500.

(f) For services rendered and expenses incurred by the United States Trust Company of New York, as mortgage trustee, $10,000 and $257, respectively; for services rendered and expenses incurred by Stewart & Shearer, its counsel, $9,000 and $949, respectively; and for serv-
4374 ices rendered by Wilson & McIlvaine, its counsel, $2,500 and $110, respectively.

(g) For services rendered and expenses incurred by the Guaranty Trust Company of New York, mortgage trustee,

$12,000 and $1,533, respectively; for services rendered and expenses incurred by Davis, Polk, Wardwell, Gardiner & Reed, its counsel, $12,000 and $1,210, respectively; and for services rendered and expenses incurred by Tenney, Harding, Sherman & Rogers, its counsel, $2,000 and $49, respectively.

(h) For services rendered by the Chemical Bank & Trust Company, as mortgage trustee, $3,000; for services rendered and expenses incurred by Wright, Gordon, Zachry & Parlin, its counsel, $5,000 and $360, respectively; and for services rendered and expenses incurred by D'Ancona, Pflaum & Kohlsaat, its counsel, $2,000 and $102, respectively.

(i) For services rendered and expenses incurerd by the City Bank Farmers Trust Company, as mortgage trustee, $5,000 and $472, respectively; for services rendered and expenses incurred by Mitchell, Taylor, Capron & Marsh, its counsel, $10,000 and $828, respectively; for services rendered and expenses incurred by Winston, Strawn & Shaw, its counsel, $3,500 and $138, respectively; and for services rendered and expenses incurred by Lawrence Richardson, its technical adviser, $1,450 and $179, respectively.

(j) For services rendered and expenses incurred by the St. Louis Union Trust Company, as mortgage trustee, $3,000 and $327, respectively; and for services rendered and expenses incurred by Bryan, Williams, Cave & McPheeters, its counsel, $3,500 and $420, respectively.

(k) For expenses incurred by the protective committee for the 50-year bonds and William Church Osborn, representing holders of those bonds, $635 and $45, respectively; for services rendered and expenses incurred by Hodges, Reavis, Pantaleoni & Downey, their counsel, $12,000 and $1,332, respectively; for services rendered by Malcolm Mecartney, their counsel, $475; for services rendered by Samuel W. McIntosh, their counsel, $250; for services rendered and expenses incurred by George H. Parker, their technical adviser, $2,625 and $502, respectively; for services rendered by H. E. Moulton, their technical adviser, $500; for services rendered and expenses incurred by J. L. White, their technical adviser, $500 and $49, respectively; and for services rendered by Joseph R. Warner, their technical adviser, $500.

(l) For expenses incurred by the Terre Haute group, representing holders of first and refunding mortgage bonds of the Chicago, Terre Haute & Southeastern Railway Com-

pany, $769; and for services rendered and expenses incurred by Hunt, Hill & Betts, its counsel, $6,000 and $639, respectively.

(m) For services rendered by the protective committee for preferred stock, nothing; and for expenses incurred by such committee, $1,802; for services rendered and expenses incurred by Robert E. Smith, its secretary, $700 and $175; respectively, as an interim allowance only; for services rendered by Broadus J. Clarke, its successor secretary, $750; for services rendered and expenses incurred by Edward R. Johnston and Albert K. Orschel, its counsel, $5,000 and $619, respectively; and for services rendered and expenses incurred by William W. Wakefield, its technical adviser, $1,875 and $331, respectively.

4375 (n) For services rendered by the independent committee for protection of the debtor's bondholders, nothing, and for services rendered and expenses incurred by Julius Weiss, its counsel, $1,500 and $826, respectively.

(o) For services rendered and expenses incurred by Guggenheimer & Untermyer and Sabath, Perlman, Goodman & Rein, counsel for the Anglo Continentale Treuhand A. G., holder of bonds, $5,000 and $467, respectively.

(p) For expenses incurred by the Imperial Trust Company, Limited, John Roth, and Francis W. Keeler, holders of bonds, $75; for services rendered and expenses incurred by Thomas F. Murphy, their counsel, $560 and $346, respectively; for services rendered and expenses incurred by Jack E. Bagon, their counsel, $365 and $77, respectively; and for services rendered by McDonald & Richmond, their counsel, $220.

(q) For services rendered and expenses incurred by Shulman, Shulman & Abrams, representing holders of the debtor's bonds, nothing.

(r) For expenses incurred by the Reconstruction Finance Corporation $953; and for services rendered and expenses incurred by Brobeck, Phleger & Harrison, its counsel, $205 and $13, respectively.

(s) For services rendered by Carter, Ledyard & Milburn, counsel for the Manufacturers Trust Company, mortgage trustee, $300.

It is further ordered, That such payments shall be made to the petitioners and claimants, or their personal representatives, rendering the services and incurring the expenses as indicated in the foregoing subparagraphs (a) to

(s), inclusive, except that in cases where counsel and technical advisers have already been paid by their principals in whole or in part, the amounts payable from the debtor's estate shall be paid to such principals to the extent only that such principals have paid their counsel and technical advisers.

And it is further ordered, That with respect to further services and expenses and with respect to services and expenses for which the foregoing limits are interim only, the Commission shall retain jurisdiction hereafter and upon further investigation to determine and fix the ultimate maximum limits of allowances to the conclusion of the reorganization proceedings.

By the Commission, division 4.

W. P. Bartel,
Secretary.

(Seal)

A true copy:

W. P. Bartel,
Secretary of the Interstate Commerce Commission.

5 And on, to wit, the 12th day of November, A. D. 1940 came the Chicago Terre Haute & Southeastern Ry. Co., First Lien Bondholders' Committee, by its attorneys and filed in the Clerk's office of said Court its certain Objections to the Proposed Findings of Fact and Conclusions of Law and Order and Decree Approving Plan of Reorganization in words and figures following, to wit: Filed Nov. 12, 1940.

6 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

In Proceedings for the Reorganization of a Railroad.

In the Matter of
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Debtor. } No. 60463.

OBJECTIONS OF CHICAGO, TERRE HAUTE & SOUTHEASTERN RAILWAY COMPANY FIRST LIEN BONDHOLDERS' COMMITTEE TO THE PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND DECREE APPROVING PLAN OF REORGANIZATION FOR DEBTOR PRESENTED FOR SETTLEMENT HEREIN IN BEHALF OF HENRY A. SCANDRETT ET AL, AS TRUSTEES OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY.

The Proposed Findings of Fact and Conclusions of Law, Order and Decree (hereinafter called "Proposed Findings"), among other things declare that the Modified Plan is fair and equitable; affords due recognition to the rights of each class of creditors and stockholders; does not discriminate unfairly in favor of any class of creditors or stockholders; will conform to the requirements of the law of the land regarding the participation of the various
7 classes of creditors and stockholders; and that it provides for the payment of all costs of administration (Article 7 of the Proposed Findings of Fact Pages 5 and 6.)

The court has ordered that any objections to the Proposed Findings or suggestions with regard thereto shall be filed with this court not later than Monday, November 11, 1940.

We do not understand the Rules or the direction of this court to require us here to raise again, and to argue again, the objections of this Committee to the Modified Plan which were presented to the court, tried and argued before it, at the hearing beginning September 4, 1940. Since it is contemplated, however, that this Committee will appeal from the decision herein, the Committee desires to make its position plain on the record.

Although Rule 52 of the Rules of Civil Procedure provides in part

"Requests for findings are not necessary for purposes of review",

Rule 46, however, in providing that exceptions are unnecessary, states that it is sufficient if a party

8 "at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objections to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him."

The court has given us such opportunity to object to the proposed ruling by filing objections or suggestions in relation to the proposed findings on November 11th. Therefore, as we read the Rules it is our duty at this time to advise the court of any objections the Committee has to the proposed rulings. We therefore submit the following objections to the proposed findings and suggestions for a modification and amendment thereof:

We Object to the Adoption by the Court of the Proposed Findings in That They Fail to Recognize the Objections to the Modified Plan Heretofore Interposed by Us Pursuant to the Order of This Court of June 21, 1940, and We Hereby Renew Our Said Objections.

Proposed Findings of Fact.

Objections.

1. We object to the Proposed Finding of Fact 11 (g) providing for a change of the word "by" in the 8th line of the last paragraph of subdivision M of the Modified Plan (Mimeo. P. 39, Printed Record pp. 7095-6) to the word "of", in that the proposed change alters the meaning of the provision. It is submitted that the use of the word "by" instead of the word "of" is not a clerical error as suggested in the "Proposed Findings", but is essential to the meaning intended by the Interstate Commerce Commission, viz., the word "by" refers to the act of disaffirmance referred to in the line above, and does not refer to the leases or contracts "of" the trustees. The change of these words would permit of treatment of claims against the trustees as though they were claims against the Debtor in existence at the time the original petition for reorganization was filed, and such is plainly against the law. Claims against the trustees must be paid by the trustees out of the bankrupt estate before the claims against the Debtor are taken care of; in particular, the change suggested would permit the trustees to avoid making good equipment vacancies under the Terre Haute lease which have accrued since these proceedings were instituted; would permit the trustees to avoid the payment of the principal of the Bedford Belt bonds which fell due during these proceedings and were payable by the trustees as an expense of the administration; and in similar way would erroneously permit the treatment of administration expense as claims against the Debtor.

Accordingly, the addition of the paragraph proposed in 11(g) page 9 of the Proposed Findings should not be made. If such a provision were included it might well relegate the claims of the Terre Haute Company or of its bondholders against the bankruptcy trustees arising out of their possession and operation of the Terre Haute to the position of unsecured creditors of the Debtor, which is plainly contrary to law.

We object to the proposed addition set forth in proposed finding 11(h) with particular reference to that portion thereof reading as follows:

"The bankruptcy trustees may at any time up to the final consummation of the Plan disaffirm any executory contracts of the Debtor * * * and any claims or damages resulting from such disaffirmance shall be treated in the same manner as herein provided for general unsecured creditors and the court shall retain jurisdiction for the purpose of disposing of the same."

Such an addition is improper for the reasons stated just above in that it might relegate claims against the bankruptcy trustees arising under the Terre Haute lease during their administration to the position of general
11 unsecured creditors of the Debtor.

Furthermore, this provision is contrary to Section 66 of the Judicial Code (Title 28 U. S. C. A. § 125), which provides:

"Every receiver or manager of any property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such manager or receiver was appointed so far as the same may be necessary to the ends of justice."

2. We object to Proposed Finding 15 in that it attempts here to modify the findings, statements, and recitals of fact made by the Commission in its original Report of February 12, 1940, as modified by its Supplemental Report of June 4 1940, and in its Supplemental Order of June 4, 1940, in accordance with the modifications and proposals included in Proposed Finding of Fact No. 11 objected to above.

Proposed Conclusions of Law.

Objections.

1. We object to the proposed Conclusion of Law "1" in that it declares that "this court has jurisdiction * * * of others having claims against or interests in the
12 Debtor or its property" because this court has not jurisdiction of the Chicago, Terre Haute & Southeastern Railway Company nor of its bondholders, although

the said Terre Haute Railway Company has claims against or interests in the Debtor or its property. The words "all others having" in the third line of the Proposed Conclusion should be stricken out and there should be substituted in place of them the words "of suits on", and such jurisdiction should be limited as provided in Section 46 of the Judicial Code referred to above.

2. We object to the proposed Conclusion of Law "2" for the reasons contained in our objections heretofore filed pursuant to the Order of this court of June 21, 1940, to the Modified Plan, and here renew such objections. We further renew our objections to the corrections and clarifications included in Proposed Finding of Fact No. 11 as incorporated in this Proposed Conclusion of Law.

3. We object to the proposed Conclusion of Law "4" in that this Committee's objections, heretofore filed herein as aforesaid, are overruled, for the reasons stated in said objections and in this Committee's claim for equitable
13 treatment and as stated at the hearing before this court beginning September 4, 1940, on the objections to the Modified Plan.

This Committee's Proposals for Additional Findings of Fact.

1. The Chicago, Terre Haute & Southeastern Railway Company (hereinafter called the "Terre Haute"), is a corporation organized and existing under and by virtue of the laws of the State of Indiana and is a corporation wholly separate and distinct from the Debtor.

2. The Terre Haute has not filed any petition for reorganization pursuant to Section 77 of the Bankruptcy Act, nor has any such petition been filed against it, nor is it in receivership in any state or federal court.

3. Of the capital stock of the Terre Haute 42,989 shares are outstanding, 41,730 of which shares are owned by the Debtor, and 1,259 shares are outstanding in the hands of others.

4. There are outstanding four bond issues secured by liens on the lines of the Terre Haute, to wit:

Southern Indiana Railway 4's Due 1951,	$7,287,000
Bedford Belt Railway 5's Due 1938,	250,000
14 Terre Haute First & Refunding 5's Due 1960,	8,056,000
Terre Haute Income 5's Due 1960,	6,336,000

As provided by the Articles of Incorporation amendments thereto, and by-laws of the Terre Haute, and by the Indenture of Mortgage securing the Terre Haute's Income Mortgage Bonds, the holders of the Income Bonds are entitled to 63,360 votes at stockholders' meetings of the Terre Haute, or, in the absence of election by such bondholders to exercise their voting power, and the taking of such steps are provided in the Indenture of Mortgage as conditions precedent to the exercise of such power, the First National Bank of Chicago as Trustee under the said Indenture of Mortgage has the right to cast such votes at stockholders' meetings.

5. The Debtor does not possess the voting control of stockholders' meetings of the Terre Haute; and the Terre Haute is not a subsidiary of the Debtor.

6. By an Indenture of Lease dated July 1, 1921, the lines of railway and properties of the Terre Haute were leased for 999 years to the Debtor's predecessor, the Chicago, Milwaukee & St. Paul Railway Company, and the said lease was taken over by the Debtor in 1928 in the reorganization of the Debtor's predecessor, which took place at that time.

7. The Terre Haute has duly performed all the terms and conditions of said lease on its part to be performed, and the same is still in full force and effect, although the said lease has never been either adopted or rejected by the bankruptcy trustees of the Debtor, their time to adopt or reject being extended by the court order herein.

8. The average annual earnings of the Terre Haute available for its interest requirements of $1,023,580 per year over the period during which the said lease has been in operation have not been less than twice its interest requirements; and the average annual earnings of the Terre Haute available for interest during the years 1936-37-38-39-40 have been approximately three times such interest requirements.

9. The said lease has been profitable to the Debtor and it has derived therefrom substantial profits well in excess of all expenditures made by the Debtor thereunder; and the net income derived by the bankruptcy trustees of the Debtor from the Terre Haute under said lease from July 1, 1935 up to July 1, 1940, is $8,973,961.

10. The said lease is not burdensome to the Debtor.

11. The said lease has been mutually advantageous to the Debtor and the Terre Haute.

12. Under said lease the Debtor was bound to pay the principal of the Terre Haute bonds when the same fell due. $250,000 principal amount of the Bedford Belt Railway Company First Mortgage 5% Bonds fell due July 1, 1938 and were not paid by the Debtor or by its bankruptcy trustees, pursuant to an order of this court directing the said bankruptcy trustees not to pay said principal but to continue to pay 5% interest thereon to the holders of such bonds.

13. Under said lease the Debtor is bound to maintain the leased property in as good and substantial repair, working order, and condition as of July 1, 1921, and to replace all or any part of the lease property destroyed or which might otherwise become unfit with property of equal value, so that there shall be no depreciation of the leased property. The Debtor, however, wholly failed to keep and perform the aforesaid covenant of said lease, with
17 the result that the cost of replacing the equipment vacancies existing under said lease and under the mortgages securing the said Terre Haute bonds as of December 31, 1937, exceeded $7,000,000, a substantial portion of such vacancies having accrued since July 1, 1935, and a substantial additional amount of vacancies having accrued since December 31, 1937.

This Committee's Proposals for Additional Conclusions of Law.

1. The Terre Haute is not a debtor in any Section 77 proceeding now before this court and/or the Interstate Commerce Commission.

2. The holders of bonds secured by first mortgages upon the lines of railway and property of the Terre Haute, to wit, the holders of the so-called "Bedford Belt 5's", the "Southern Indiana 4's", and the "Terre Haute First and Refunding 5's", are not such creditors of the Debtor as could be bound as a class by a confirmed plan of reorganization of the Debtor which divested them of their existing liens upon the Terre Haute properties.

3. This court in this proceeding is without jurisdiction to modify the Terre Haute bonds or the mortgages
18 securing them.

4. The Terre Haute is not in default under the

aforesaid lease but has duly performed all the terms and conditions upon its part to be performed thereunder.

5. There is no evidence in this case to warrant or support a finding that said lease is burdensome to the Debtor.

6. The Terre Haute lease is not only not burdensome to the Debtor and its estate, but is profitable thereto.

7. The court has no power to impair the contract obligations of the Terre Haute lease, since the lease is not burdensome to the Debtor.

8. Neither the Commission nor this court has power in this proceeding to disaffirm or reject said lease or to modify the rights of the Terre Haute thereunder, or of those claiming by, through, or under the Terre Haute, at the instance of the Debtor or of its creditors or stockholders, or of the Commission, since neither the Commission nor the Court has jurisdiction of the Terre Haute or of its bondholders in these proceedings, since the Terre Haute is not in default under said lease, and since the said lease is not burdensome to the Debtor.

9. The Modified Plan is defective in that it does not provide for the payment of all costs of administration in the event of rejection of the Terre Haute lease, as required by Subdivision (e) of Section 77 of the Bankruptcy Act.

10. In the event of rejection of the Terre Haute lease the rejection will relate back to the date of the filing of the original petition for reorganization herein, July 1, 1935, and the Debtor's bankruptcy trustees will be liable to account for and to pay over to the Terre Haute all net earnings derived from the operation of the Terre Haute since July 1, 1935, less all sums paid thereout to or for the account of the Terre Haute during such period.

11. The Debtor's bankruptcy trustees are bound to make good in kind all equipment and other vacancies existing under the Terre Haute lease and the Modified Plan is defective in that it fails to make due provision therefor.

12. The Bankruptcy Trustees are bound to pay the $250,000 principal amount of Bedford Belt 5's outstanding in the hands of the public and the Modified Plan is defective in that it fails to make provision therefor.

13. The Plan is defective in that it discriminates unfairly against the Terre Haute by requiring that the holders of the Terre Haute bonds shall waive all claims

arising out of the aforesaid equipment vacancies under the mortgages securing said bonds up to the effective date of the Plan, January 1, 1939, whereas no others having claims against the Debtor and against its Bankruptcy Trustees are required to waive the same.

This Committee's Suggestions for Modification of the Proposed Order and Decree.

The proposed Order and Decree should be modified to conform to the objections and suggestions of this Committee made above in relation to the Proposed Findings of Fact and Conclusions of Law.

Dated, New York, N. Y., November 10, 1940.

Respectfully submitted,

Hunt, Hill & Betts,
By Reese D. Alsop,
Reese D. Alsop,
A Member of the Firm,
Attorneys for the Chicago, Terre Haute & Southeastern Railway Company First Lien Bondholders' Committee.

21 I Hereby Certify that I have this day mailed copies of the foregoing to the following:

Messrs. Sidley, McPherson, Austin & Burgess,
11 South La Salle Street,
Chicago, Ill.,
Attorneys for the Institutional Investors Group;

Messrs. Mitchell, Taylor, Capron & Marsh,
20 Exchange Place,
New York City,
Attorneys for the City Bank Farmers Trust Co., as Trustee for the Milwaukee & Northern Bonds;

Major Fred N. Oliver,
Oliver & Donnally, Esqs.,
110 East 42nd Street,
New York City,
Attorney for Savings Bank Group;

Cassius M. Clay, Esq., Counsel,
Reconstruction Finance Corporation,
Washington, D. C.

A. N. Whitlock, Esq., Attorney for Trustees,
888 Union Station Bldg., Chicago, Ill.

Reese D. Alsop.

New York, N. Y.,
November 10, 1940.

22 Endorsed: District Court of the United States. * * * (Caption—60463) * * * Objections of Chicago Terre Haute & Southeastern Railway Company First Lien Bondholders' Committee to the Proposed Findings of Fact, Conclusions of Law and Order and Decree Approving the Plan of Reorganization for Debtor Presented for Settlement Herein in Behalf of Henry A. Scandrett, et al., as Trustees of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co. Filed Nov. 12, 1940. At 9:30 O'clock A. M. Hoyt King, Clerk.

25 And on, to wit, the 12th day of November, A. D. 1940 came the Fifty Year Mortgage Trustees by their attorneys and filed in the Clerk's office of said Court their certain Objections and Memorandum to finding of fact and conclusions of law, Order and Decree in words and figures following, to wit: Filed Nov. 12, 1940.

26 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

To All Counsel of Record:

You Are Hereby Notified that on November 11, 1940, the undersigned filed with the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, objections and memorandum of Fifty Year Mortgage Trustees to the proposed findings of fact, conclusions of law, order and decree, hearing on which is set for November 13, 1940, a copy of such objections and memorandum being hereto attached and served upon you.

Dated: November 9, 1940.

Davis Polk Wardwell Gardiner & Reed,
15 Broad Street,
New York, N. Y.

Tenney, Harding, Sherman & Rogers,
120 South LaSalle Street
Chicago, Ill.

Solicitors for Guaranty Trust Company of New York and Merrel P. Callaway as Trustees under the Fifty Year Mortgage of Chicago, Milwaukee, St. Paul and Pacific Railroad Company dated as of February 2, 1925.

Edwin S. S. Sunderland,
Henry F. Tenney,
Thomas O'G. FitzGibbon,
Roger R. Leech,
George John Miller,
Of Counsel.

Filed Nov. 12, 1940. 27 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

OBJECTIONS AND MEMORANDUM OF FIFTY YEAR MORTGAGE TRUSTEES TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND DECREE.

Guaranty Trust Company of New York and Merrel P. Callaway, as Trustees under the Mortgage and Deed of Trust of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, dated as of February 2, 1925 (herein called the "Fifty Year Mortgage") securing Chicago, Milwaukee, St. Paul and Pacific Railroad Company Fifty Year 5% Mortgage Gold Bonds, Series A, due February 1, 1975 (herein called the "5s of 75" or the "Fifty Year Bonds") hereby object as follows to the terms and provisions of the proposed findings of fact, conclusions of law, order and decree:

Proposed Findings of Fact.

1. To the underscored words in the following last two sentences of proposed finding of fact No. 4:

"The Debtor and the Trustees likewise, pursuant to Order of the Court, have, from time to time, filed with the Court such statements of assets and liabilities, revenues and expenses and such schedules and have submitted such other information as was required or necessary to disclose the conduct of the Debtor's affairs, the operation of the Debtor's properties and the fairness of any proposed plan of reorganization. The Debtor and the Trustees have taken all steps and furnished all information necessary or required as preliminary to the consideration of a plan of reorganization."

28 2. To (a), (b), (c) and (d) of proposed finding of fact No. 7.

3. To such of the findings, statements and recitals of fact made by the Interstate Commerce Commission and incorporated by reference in proposed finding of fact No. 15 as are contrary to, or fail to give effect to, the objections dated August 1, 1940, filed with the Court by the Fifty Year Mortgage Trustees.

4. To the failure to make findings of fact in accordance with the objections dated August 1, 1940, filed with the Court by the Fifty Year Mortgage Trustees.

Proposed Conclusions of Law.

1. To proposed conclusion of law No. 2.
2. To proposed conclusion of law No. 4.
3. To the failure to set forth conclusions of law in accordance with the objections dated August 1, 1940, filed with the Court by the Fifty Year Mortgage Trustees.

Proposed Order and Decree.

1. To the approval of the Modified Plan certified to the Court by the Commission, even with the corrections, clarifications and reservation contained in the proposed order and decree.
2. To the overruling of the objections dated August 1, 1940, filed with the Court by the Fifty Year Mortgage Trustees.

Reasons.

The reasons for the foregoing objections may be briefly summarized. The Fifty Year Mortgage Trustees have
29 contended all along that the data introduced in evidence are not an adequate basis for a major and long-range disruption of liens. The segregation study itself has not been properly made. No severance or contributive income studies have been attempted. No separate study has been made for the General Mortgage lines. Recent data have not been furnished. Yet, in the absence of the foregoing, other factors have been given inadequate, if indeed any, weight, and no opportunity for conference and compromise has been afforded. Detailed argument has been submitted on brief regarding the foregoing and also the inequity of the results reached in the Modified Plan, and therefore is not repeated here.

Opinion of the Court.

The proposed order and decree provides that the opinion of the Court, dated October 21, 1940, be sent to the Commission. It is respectfully submitted that in some respects this opinion may be misleading.

The statement that "the Fifty Year bonds are in the position of second lien bonds with a poor earnings record" (p. 41), while correct as a strictly legal matter, does not give proper recognition to the fact that the Fifty Year Bonds are virtually in a first lien position because of the

existence of sufficient security for the small issue of First and Refunding Bonds exclusive of their first lien on the Western Lines.

The statement from the Commission's Report, adopted by the Court at the end of page 41, to the effect that the holders of the Fifty Year Bonds, on the basis of allocations to them proposed in the Modified Plan, "will begin to share earnings with the general mortgage bonds and Northern consolidated bonds after $9,675,000 of prior charges, including a payment of $2,500,000 to the additions and betterments fund", may or may not be the case in practice, depending upon whether the discretionary $2,500,000 portion of the additions and betterments fund, which comes ahead of the proposed new Series B Income Bonds, is used or not. If it be used, the figure of $9,675,000 becomes $12,175,000. Furthermore, the Commission's Report provides for accumulations of Series A Income Bond interest up to 13½ per cent, in priority to Series B Income Bond interest.

Clarification of the opinion in these respects is respectfully requested.

Dated: November 9, 1940.

Guaranty Trust Company of New York and Merrel P. Callaway, as Trustees as aforesaid

By Davis, Polk, Wardwell, Gardiner & Reed,

Davis, Polk, Wardwell, Gardiner & Reed,
15 Broad Street,
New York, N. Y.

Tenney, Harding, Sherman & Rogers,

Tenney, Harding, Sherman & Rogers,
120 South LaSalle Street
Chicago, Ill.

Solicitors for Guaranty Trust Company of New York and Merrel P. Callaway as Trustees as aforesaid.

Edwin S. S. Sunderland,
Henry F. Tenney,
Thomas O'G. FitzGibbon,
Roger R. Leech,
George John Miller,
Of Counsel.

31 CERTIFICATE OF SERVICE.

I hereby certify that I have this day served the foregoing objections and memorandum upon all parties of record in this proceeding, by mailing a copy thereof properly addressed to each party of record.

Dated at New York, N. Y., this 9th day of November, 1940.

George John Miller,
Of Counsel for Fifty Year Mortgage Trustees.

32 Endorsed: In the District Court of the United States. * * (Caption—60463) * * Objections and Memorandum of Fifty Year Mortgage Trustees to Proposed Findings of Fact, Conclusions of Law, Order and Decree. Filed Nov. 12, 1940. At 9:27 o'clock A. M. Hoyt King, Clerk.

2704 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—60463) * *

The following proceedings were had before the Honorable Michael L. Igoe, Judge of the United States District Court, in the United States Court House, Chicago, Illinois, on Wednesday, the 13th day of November, A. D. 1940, in the matters of the entry of findings of fact, conclusions of law and order and decree as to allowances to various claimants for fees and expenses, and findings of fact, conclusions of law and order and decree approving plan of reorganization for Debtor.

Appearances:

Mr. A. N. Whitlock, Appearing on behalf of the Trustees of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company;

Messrs. Sabath, Perlman, Goodman & Rein, appeared on behalf of the Anglo-Continentale Treuhand;

Messrs. Shulman, Shulman & Abrams, appearing on behalf of the Adjustment Mortgage Bondholders;

Messrs. Sidley, McPherson, Austin & Burgess, by Mr. K. F. Burgess and Mr. D. F. Smith, appearing on behalf of the Institutional Investors, Mutual Savings Bank Group;

Messrs. Bell, Boyd & Marshall, by Mr. J. E. Nolan, appearing on behalf of the Fifty-year Mortgage Bonds;

Messrs. Davis, Polk, Wardwell, Gardiner & Reed, by Mr. Roger R. Leech, appearing on behalf of the Guaranty Trust Company of New York and Merrel P. Gallaway, as Fifty-year Mortgage Trustees;

Messrs. West & Eckhart, by Mr. William A. McSwain, appearing on behalf of the C T H & S E Railway Company Income Mortgage Bondholders.

2705 Mr. Whitlock: If the Court please, pursuant to your Honor's opinion which directed counsel to prepare and present on notice appropriate findings of fact, conclusions of law and orders and decrees, the counsel for the Trustees prepared two orders. That was done for this reason:

One of them was prepared to take care of the matter of allowances to various claimants. That was a separate order and decree for the reason that it was thought that perhaps some one might desire to appeal from that order and would not desire to appeal from the order approving the plan, or vice versa. So, to save volume in printing and to facilitate the proceedings we prepared two orders.

I wish to present to your Honor first, The Findings of Fact, Conclusions of Law and Order and Decree as to The Allowances of the Various Claimants for Fees and Expenses in connection with this proceeding and plan.

The order as drawn conforms strictly to your Honor's opinion and make allowances in the exact maximum amounts fixed by the Commission in each case to each claimant.

There have been no objections filed to this order with the exception of Mr. Abrams who did file an objection and has a statement to make about that.

The Court: Let me see, before we do that, what about this motion that Mr. McSwain filed?

Mr. Whitlock: Oh, yes.

The Court: I think that ought to be acted on.

Mr. McSwain: Yes. I submitted a copy of the decree changed in order to comply with Mr. Smith's suggestion; and they approved it; isn't that correct?

Mr. Smith: That is true.

Mr. Whitlock: As counsel for the Trustees, I have no objection to the order in that form.

The Court: Where is that? Have you that order?

Mr. McSwain: Yes. I sent up the form yesterday.

The Court: Have we that here?

Mr. McSwain: Yes. I sent it over yesterday. Perhaps your secretary has it.

2706 The Court: We have your amended objections. Well, in all events you sent it over and you folks have seen it?

Mr. Whitlock: That is right. And there is no objection to it, your Honor, from my point of view unless somebody else has some objections.

Mr. Smith: No.

The Court: As I understand it, all he is doing there is putting into writing the points covered by his remarks.

Mr. McSwain: That is right.

Mr. Whitlock: And the orders dealing with the maters he raised were passed upon by your Honor in the opinion.

Mr. McSwain: That is correct.

Mr. Whitlock: Now, Mr. Abrams has something to say.

Mr. Abrams: If the Court pleases, I presented the form of a draft order to counsel for the Debtor, which counsel is satisfied with as to form. I want at this time particularly to urge, that I understand that your Honor's opinion is in view of the fact that the Commission fixed the maximum allowance your Honor has no jurisdiction to allow to our client and to ourselves anything because it is not within the maximum amount as fixed by the statute. That is your Honor's opinion?

The Court: My understanding is that the only power we have is what the statute gives us. They have narrowed that down as far as attorneys' fees are concerned, so that we can only go as far as what was limited by the Commission.

Mr. Abrams: All right. I have this draft order.

Mr. Whitlock: The order we prepared is an order making allowances, not denying allowances. Naturally, as Mr. Abrams was not given any maximum limit by the Commission he is not mentioned and his claim is not mentioned by the order that we have prepared.

Mr. Abrams: I was given a maximum limit. I was given a maximum limit of zero.

Mr. Whitlock: Oh, yes.

The Court: That is not very much.

Mr. Whitlock: No. So the order that he presents,
2707 as I understand it, is an order overruling the objection which he has filed. The objection is an objection to the report and order of the Commission.

The Court: The Commission has already overruled it?

Mr. Abrams: The Commission has overruled my original objection.

The Court: In connection with these orders, Mr. Whitlock, I saw in the Chicago Tribune yesterday in an early edition some mention of a report which Senator Wheeler's Committee has gotten out in Washington.

Mr. Whitlock: Well, that relates to—

The Court: In which he bitterly criticized the reorganization, both the last one and the present one.

Mr. Whitlock: Well, that is in error. The only matter being investigated by that committee is the prior receivership of 1925 to 1928.

The Court: Is that the reason they took that story out of the later edition? I saw it in an early edition. I looked for it in a later edition and I could not find it. The story in the first edition did not limit its criticism to the first reorganization. It went right on and criticized this reorganization too.

Mr. Whitlock: Well, the story I read did not do that, but I am certain that that committee is not investigating this reorganization proceeding. That investigation has been going on for a long time. We get those pamphlets periodically. We got about six of them this morning. It covers all of the railroads, the Great Western, and others. You probably noticed that last week. The pamphlet is out on them. Now, I presume this one will come on in a day or two. We have not seen it.

The Court: Has any one seen this one?

Mr. Abrams: I have seen the Tribune. It did not refer to this reorganization.

Mr. Burgess: I attended the hearing before the Senate Committee and they restricted themselves to the prior reorganization.

Mr. Whitlock: I am sure that is so.

The Court: In so far as the attorneys' fees are concerned, that is all that is mentioned in this order that you are handing up here now?

Mr. Whitlock: That is right.

The Court: As I understand it, while every one is not satisfied, the only one making any formal objection is
2708 Mr. Abrams. This Court went as far as it could as far as the attorneys' fees were concerned. The statute limits us to the maximum amount fixed. We did not disturb that in any form.

Mr. Abrams: While your Honor could not increase the maximum fees, your Honor had the right to recommend to the Commission that we have done some work in the case and they could change their maximum limits so your Honor could allow us something. My position is that the Commission can't tell what fees are going to be paid to the attorneys. All they can do is fix the maximum amount. That is the only point I am making.

The Court: Has a copy of this decree been served on everybody?

Mr. Whitlock: Yes; it has been served.

The Court: Well, this is a copy.

Mr. Whitlock: That is the one I handed up to you. The Clerk has the original.

The Court: Well, the one they filed with the Clerk is still before us. We have got copies here.

Mr. Whitlock: Yes. I sent this copy over here.

The Court: Yes; I have it here.

Mr. Whitlock: I want to request your Honor that the dating of this decree be the same as the decree with reference to the approval of the plan because they are interdependent upon each other.

The Court: All right. We will take up the order on the plan, too. First of all we will take care of Mr. McSwain. We found that here.

Mr. Whitlock: That is all right.

The Court: Now, you have your other decree here?

Mr. Whitlock: That is right.

The Court: To which there are objections?

Mr. Whitlock: The other decree, if your Honor please, is a combination of findings of fact, conclusions of law and order and decree approving the plan of reorganization for the Debtor. The findings, the conclusions and the order and decree as prepared and heretofore served upon all interested parties conforms, I believe, to your Honor's opinion which was filed herein on the 21st of October last.

It is identical in every particular with the recitals
2709 and findings and statements contained in that opinion with one slight clerical change to which I wish to call your Honor's attention, and that is on page 12 in the findings of fact, one of the modifications which was suggested by the trustees to the plan and which was approved without objection. It is under "D" on page 12. It relates to the matter of a change in the accounting rules with reference to the charging of depreciation.

The Court: Oh, yes.

Mr. Whitlock: In the third line of that quoted portion under "D", the words "Depreciation of" have been inserted. That was done at the suggestion of one of the parties who called my attention to the fact that what was really meant was depreciation as distinguished from an operating expense account for roadway and structures which is already maintained; and it is clear from the context below that depreciation is meant.

There is no objection from any one to that classification. Otherwise, I think the decree in every particular conforms to your Honor's opinion.

The Court: What do you say about these objections Mr. Alsop has filed here? He is the only one that has filed any.

Mr. Whitlock: I have this to say. No, there is one other. Didn't your Honor get the objections filed by Davis, Polk, Wardwell, Gardiner & Reed?

Mr. Leech: They were filed. I have a copy here.

The Court: Oh, this is the one that was filed with the Commerce Commission.

Mr. Whitlock: No.

Mr. Leech: No; that was filed with the Clerk.

The Court: Well, this was filed with the Interstate Commerce Commission. No. This is the Committee for the Preferred Stockholders. That was filed with the Interstate Commerce Commission, wasn't it?

Mr. Leech: There was one filed here.

Mr. Whitlock: Well, I have this to say generally, your Honor, with reference to these objections to the proposed findings and conclusions:

They are in effect objections to the plan. They constitute a restatement of the position of the parties taken at the hearing before your Honor; and, of course, if their objections were sustained and their position adopted it would constitute a reversal of your Honor's position
2710 as indicated in your opinion.

I see no other purpose that they serve, and, assuming that your Honor is of the same opinion as when the opinion was filed, I would suggest that if that opinion is to stand these objections will necessarily have to be overruled.

Mr. Leech: Mr. Whitlock has referred to the objections that were filed on behalf of the fifty-year mortgage trus-

tees. What he said probably properly applies to the objections or suggestions stated for those gentlemen in the last part, which referred to the opinion your Honor rendered on October 21, the language of which opinion is incorporated in the findings, order and decree; and our suggestion in that connection is that since the opinion is incorporated in the findings and the decree there are certain statements, two or three in number, which your Honor might consider clarifying since the opinion as a part of the decree and findings will be used by a large number of the holders of the fifty-year bonds in determining their action in connection with the plan.

One suggestion which is made refers to the statement on page

Mr. Whitlock: 41? Page 41 are you referring to?

Mr. Leech: —on page 41 of your Honor's opinion where you embodied these statements of the Commission to the effect that:

"'If the holders of the 50-year bonds are assigned a part of the new series B income bonds only, as herein provided, they will begin to share earnings with the general mortgage bonds and the Northern consolidated bonds after $9,675,000 of prior charges, including a payment of $2,500,000 to the additions and betterments funds,—.'"

Now, our client—we have suggested in these objections that that is misleading in that no reference is made to the discretionary additional sum of $2,500,000 which can precede payment on the bonds which are given in the plan to the fifty-year mortgage bonds.

The Court: I thought you went into all that in your argument; that matter was fully discussed.

Mr. Leech: There was no opportunity, of course, your Honor, to make any suggestions in connection with the language you use in your opinion until the opinion was handed down.

2711 Now, our suggestion is that the inclusion of that statement without any reference to the discretionary portion of the additions and betterments fund and without any reference to the cumulative dividends on the series A bonds is misleading.

This morning I received from our New York associates a short memorandum in which they suggest that your Honor should consider a revision of that portion of your opinion

in some manner which your Honor would decide proper, in this wise:

By the addition at the end of the quoted portion on page 42 of a paragraph reading as follows:

Now, I can either read into the record or hand this memorandum to your Honor.

The Court: If you want to get it in the record you better read it.

Mr. Leech: This would be an insertion on page 42 of the opinion at the conclusion of the quotation from the findings of the Commission:

" 'It is of course true that the discretionary $2,500,000 portion of the additions and betterments fund, if used, would permit earnings on the series B income bonds only after $12,175,000 of prior charges, and that in addition interest on the series A income bonds is cumulative up to 13½ per cent and is prior to interest on the series B income bonds.

" 'Under the circumstances, however, it would seem that the treatment accorded these bonds under the Plan is fair and equitable.' "

That is the conclusion of the insertion which we suggest for your Honor's consideration.

The further suggestion has been made in the document we filed that the statement in the first full paragraph on page 41 of your Honor's opinion is also misleading, where the statement referred to is this:

"The fact is, however, that under the situation presented to the Commission and to the Court, the Fifty Year bonds are in the position of second lien bonds with a poor earning record."

We have stated in our objections that whereas that may be strictly legally correct, as a practical matter, it presents a misleading picture to the fifty-year bondholders of which there is a very large number.

The Court: It is true, isn't it?

2712 Mr. Leech: Our suggestion is—as I say, as a strictly legal matter it is true. Our suggestion is that to prevent this being misleading your Honor might consider revising that sentence by inserting the word "legally" before the phrase "in the position of second lien bonds" and adding at the conclusion of the sentence this phrase:

"—although it may be said that as a practical matter they have virtually a first lien position on the western lines."

The Court: What is the use of fooling those people? That has been the trouble with most of these reorganizations. They come in with a bond that is pink in color, and they go out with one that is blue in color. The fellow that comes in with the pink one and goes out with the blue one is not any better off than when he came in. I don't see any reason for fooling these people at all. I think that is an accurate statement of what the situation of these bonds is.

Mr. Leech: These suggestions, your Honor, are made with the idea that your Honor will consider them to determine whether or not in your mind the statements are going to be misleading to this very large number of bondholders.

The Court: I think you might just as well tell these bondholders the truth about it. They are going to get returns here if this property makes some money. If it does not, they are not going to get any return.

Mr. Leech: Only one more brief suggestion, our Honor. That refers to the first full sentence on page 41 of the opinion where the statement is made to this effect, quoting:

"The difficulty with the western lines is that the testimony introduced before the Commission and that introduced before the Court showing the pertinent information down to date shows that the western lines are deficit lines."

We are unable to find that the record includes any reference to earnings of the western lines for the year 1939 or any portion of the year 1940, and this statement clearly indicates that information on the earnings of the western lines was available down to the date of the hearing.

The Court: You think that might have destroyed the deficit situation there?

Mr. Leech: Well, we have hopes that that might—

2713 The Court: I thought that was one matter about which everybody could agree in this situation, that the western lines were a deficit proposition.

Mr. Leech: The fact is that a very large holder of the fifty-year mortgage bonds requested of the trustees at one time information as to the earnings of the western lines for the year 1939 and the first six months of 1940. The reply was in not furnishing those records that the compilation of them would require entirely too much time and involve too much expense.

The Court: Well, if any request was made like that during the hearing that request would have been complied with. Nobody made a suggestion like that during this hear-

ing. I remember distinctly they had there, the company had its auditors and their assistants over here and they complied with every suggestion made by any party to this litigation. Some of them I thought were away beyond reason.

Mr. Smith: The Court may recall the statement that was furnished to this large bondholder that is referred to to show the earnings of the western lines, which was apparently never turned over to his counsel and they stated to the Court that they were entirely surprised when that was introduced here.

Mr. Leech: Is it a fact, Mr. Smith, that the record does include a statement showing earnings for the western lines for the year 1939 or any portion of the year 1940?

Mr. Smith: I don't recall how lately that exhibit showed the earnings. I did not understand, however, that this opinion which perhaps was issued at 2:00 o'clock meant to reflect the situation at 1:00 o'clock that afternoon, but it did show earnings to a very recent date.

Mr. Leech: Well, that is exactly our point. Of course, the opinion speaks as of a date and the statement that the testimony includes a showing of pertinent information down to date clearly refers to the date of the opinion; and our suggestion is the elimination of the words "showing the pertinent information down to date."

Mr. Whitlock: It was brought down to the latest available date.

Mr. Smith: How in the world could they show it down to the very date of the opinion when the Court had to have an opportunity to write his opinion after the record was closed?

Mr. Whitlock: Exactly.

Mr. Leech: We do not, of course, quibble about showing it down to the date of October 21, 1940, but my infor-
2714 mation is that there is no record of the earnings of any portion of the year 1939 or any part of the year 1940, and the fact is that if there were such statements they would probably show increased earnings, maybe not enough to completely remove the deficit but enough to at least decrease it.

The Court: What other objection have you.

Mr. Leech: That is all.

Mr. Rein: The only thing I have, your Honor, I would like an order allowing our memorandum of objections with

respect to the modified plan to stand as exceptions to the decree.

The Court: Have you see this?

Mr. Whitlock: No; I have not seen that.

The Court: There should not be any objection to that. All that you ask for here is that your objections really be exceptions?

Mr. Rein: That is right.

Mr. Whitlock: There is certainly no objection to allowing the appropriate exceptions to any party.

Mr. Abrams: May I also have the record show that my objections stand as exceptions?

The Court: Yes, sir. But I don't think either one of you has to do that.

Mr. Rein: I don't think so either.

Mr. Whitlock: I don't either.

Mr. Nolan: On behalf of Mr. Alsop for whom we are acting as local counsel, I think that one of his objections goes beyond his objections to the plan and that is his objections to the proposed finding 11-g, the correction proposed in 11-g of your Honor's Opinion.

The Court: That is where they criticized the changes made by the Trustee.

Mr. Whitlock: Yes; that is right.

Mr. Nolan: The proposed change by the Trustee, yes.

The Court: We went into that on the hearing, didn't we?

Mr. Whitlock: Well, I would like to answer that when counsel gets through with an explanation that I do not believe your Honor has heard up to date.

Mr. Nolan: I simply wanted to point that out.

The Court: I have read this. I take it what his
2715 objection is, he objects to your changing the order issued by the Interstate Commerce Commission.

Mr. Whitlock: On this question that is just presented, objection is now made for the first time to one of the corrections proposed by the trustees and approved by the Court. No objection was made to any of those proposals at the time they were proposed and everybody consented that they might be made. But, waiving that, counsel says that the proposed correction is not a clerical correction, but is a correction that goes to the substance of the plan. Now, the correction made is a change of the word "by" to the word "of."

The Court: Yes.

Mr. Whitlock: When that came to my attention and prior to the time that I made my proposal for modifications I consulted the record, the report, and found that in the report the Commission used the word "of" instead of the word "by," in discussing the same thing, and I wrote to the Commission and asked them if that was a clerical error and I have here a letter dated July 13, 1940, addressed to me and signed by Oliver E. Sweet, Director of the Finance Bureau of the Interstate Commerce Commission, and it reads as follows:

"Receipt is acknowledged of your letter of July 9, 1940, regarding certain language used in the provision of the approved plan of the Milwaukee regarding claims arising from the disaffirmance of executory leases or contracts. We thank you for directing our attention to the typographical error in the use of the words 'of' and 'by.' The printed copy of the supplemental order (part M, last paragraph) will read as follows:

* * * 'and claims arising from the disaffirmance of executory leases or contracts of the trustees, pursuant to orders of the court * * * shall be assumed by the new company' * * *

"Very truly yours,

"Oliver E. Sweet,

"Director."

I have here the printed copy and it does so read.

2716 So there isn't any question of a misunderstanding or a difference of opinion as between the Court and the Commission as to what was intended.

The Court: And there wasn't any objection made at the time you offered this, was there?

Mr. Whitlock: Not at all.

On this other point raised by counsel representing the fifty-year bondholders, I want to call your Honor's attention to this thing:

What is asked here is the request to your Honor to change your opinion, and I submit that the requests are exceedingly refined to say the least. But the portion of the opinion to which the objection is directed is, when read with the rest of opinion, perfectly clear.

Now, turning to page 41, the claim is made that it does not sufficiently appear that the fifty-year 5's are in effect as they claim first mortgages upon the western lines. As a

matter of fact, it is stated at the last part of the long paragraph on page 41 that that is their claim. In other words, that they do have really a first lien upon the lines west, and a reference to page 10 of the opinion will disclose that the opinion there sets out specifically both the amount of the bonds and the fact that they are all pledged with the Reconstruction Finance Corporation and that the payment of the debt secured by the pledge will release those bonds for cancellation. So that the facts are definitely and correctly stated as to the lien position of those mortgages.

Now, as to the other objection made—

Mr. Leech: Just a minute, Mr. Whitlock. I don't find this statement you first referred to on page 41.

Mr. Whitlock: Here it is:

"Attention is also called to the fact that the First and Refunding Mortgage, which is senior to the Fifty Year Mortgage, ceases to be important by reason of the treatment accorded to the claim of the Reconstruction Finance Corporation and the resulting release and cancellation of the First and Refunding Mortgage bonds."

That is a correct statement of what will happen, and it shows that this fear that this opinion will indicate that
2717 the First and Refunding bonds occupy a different position than that that they occupy in fact is not well founded.

Now, as to the other point, the Court's attention is called to the fact that in stating the point at which the fifty-year 5's will begin to share earnings, the Court does not go ahead and spell out that that point will be further removed if the additions and betterments fund is increased.

The portion objected to there, your Honor, is not your language; it is the language of the Commission, quoted from the Commission's report, and it specifically says this:

"'If the holders of the 50-year bonds are assigned a part of the new series B bonds only, as herein provided, they will begin to share earnings with the general mortgage bonds and Northern consolidated bonds after $9,675,000 of prior charges, including a payment of $2,500,000 to the additions and betterments fund, —'"

It shows on its face that that is included.

Now, if a larger amount is included, of course the bonds would be postponed to the extent of that larger amount, of course. And your Honor attaches to your opinion an appendix which shows exactly in tabulated form where the

fifty-year 5's would begin to share in earnings if the additional amounts for additions and betterments were allowed.

So I don't reall see any point to the objection made by counsel.

Mr. Leech: Our suggestion was that at the place where your Honor quoted from the Commission's report no reference was made at all either to the discretionary $2,500,000 in additions and betterments which would be in addition to that amount which is specifically referred to, and no reference made to the cumulative 13½ per cent on the series A bonds prior to the payment of anything on the B bonds.

Mr. Whitlock: Well, that is because the discussion, of course, was limited to the point at which they would share in earnings if you took into consideration the fixed additions and betterments fund.

The Court: I thought that was rather plain. If certain fixed charges are the only ones that are going to be taken out of the earnings they are going to participate quicker that if those additional charges are taken out.

2718 Mr. Whitlock: I think so.

The Court: Is that decree here?

Mr. Whitlock: It is here, your Honor.

The Court: I will sign them both as of today.

Mr. Whitlock: That is satisfactory, your Honor.

I would suggest that the one on allowances be first filed. That is, in order that it be taken first.

The Court: I will sign that one first. That will show on the register first.

And I will sign these orders for Mr. Rein and Mr. Abrams.

Mr. Whitlock: In view of this last order by Mr. Rein, that the objections to the modified plan be considered as objections to the order, of course, the order itself does not recite the overruling of any objections to it, naturally, because that order was put out before objections were made. I think the minutes should show, however, that any objections to the proposed order are overruled.

Mr. Rein: Yes.

The Court: I imagine we better have a minute order then that the objections have been filed and were heard at this present sitting and were overruled.

Mr. Whitlock: Objections to the findings, conclusions and decree as to allowances and as to the approval of the plan are all overruled.

The Court: I want you to sit down and write that out, if you will.

Mr. Whitlock: Very well, I will do that.

2719 Endorsed: In the District Court of the United States. * * (Caption—60463) * * Stenographer's Transcript of Proceedings on November 13, 1940. Filed Aug. 31, 1941, Hoyt King, Clerk.

23 And afterwards, to wit, on the 13th day of November, A. D. 1940, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit: Entered Nov. 13, 1940.

24 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

Wednesday, November 13th, A. D. 1940.

Present: Hon. Michael L. Igoe, District Judge.

It Is Ordered by the Court that all objections to the proposed findings of fact, conclusions of law, and order and decree as to the allowance to various claimants for fees and expenses, and all objections to the proposed findings of fact, conclusions of law, and order and decree approving the plan of Reorganization be and the same are hereby overruled.

33 And on, to wit, the 13th day of November, A. D. 1940, and filed in the Clerk's office of said Court certain Findings of Fact, Conclusions of Law and Order and Decree Approving Plan of Reorganization for Debtor, in words and figures following, to wit:

Entered Nov. 13, 1940.

34 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AND DECREE APPROVING PLAN OF REORGANIZATION FOR DEBTOR.

These proceedings came on for hearing on September 4, 1940, pursuant to Order of this Court made June 21, 1940, and due and legal notice duly given as required by said Order, on the Modified Plan of Reorganization for the Debtor, approved by the Interstate Commerce Commission, hereinafter called the "Commission", in its Report of February 12, 1940, its Supplemental Report of June 4, 1940, and its Supplemental Order of June 4, 1940, certified to this Court by the Commission, together with the record of the proceedings before the Commission, and on all objections to said Modified Plan and all claims for equitable treatment filed herein, such objections and claims having been filed by various parties, interveners and others. Said hearing on the Plan was concluded on September 13, 1940, and was duly continued to October 21, 1940, for a consideration of petitions for allowances, as to which separate findings, conclusions, order and decree have been this day made. At said hearings all of those supporting the Modified Plan, all of those objecting
35 thereto and all of those claiming equitable treatment were given an opportunity to be heard and to introduce evidence. The Court, having heard the testimony given at said hearings and having considered all of the evidence, including the exhibits, and having considered the record certified to the Court by the Commission, the arguments of Counsel and the entire record in these proceedings; and being fully advised in the premises, and having filed its opinion herein on October 21, 1940, and proposed findings of fact, conclusions of law and order and decree having been presented upon due and legal notice as provided in said opinion, hereby makes the following Findings of Fact and Conclusions of Law:

Findings of Fact.

1. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the Debtor in this proceeding, a railroad corporation organized under the laws of the State of Wisconsin, had its principal executive and operating office in Chicago, Illinois, within the territorial jurisdiction of this Court, for a period of more than six months immediately prior to June 29, 1935, on which date it filed its petition in this Court, stating that it was unable to meet its debts as they matured and that it desired to effect a plan of reorganization under Section 77 of the Act of July 1, 1898, entitled, "An Act to establish a Uniform System of Bankruptcy Throughout the United States", as amended, (hereinafter called "Section 77"). A copy of said petition was filed at the same time with the Commission.

2. The Court, on said date, approved the petition as properly filed and authorized the Debtor to continue in possession and control of its properties and assets. Thereafter, the Court, by order dated October 17, 1935, appointed Henry A. Scandrett, Walter J. Cummings and
36 George I. Haight, Trustees of the property of the Debtor. Following the ratification of their appointment by the Commission and their qualification, the Trustees, so appointed, took possession of the property and assets of the Debtor on January 1, 1936, and since said time have continued, and now are, in the possession and control of the same and the operation thereof.

3. The Debtor, pursuant to the provisions of Section 77, filed with its petition a plan of reorganization dated July 1, 1935. Said plan was also filed with the Commission and, after due notice, hearings thereon were held by the Commission on August 5-7, 1935, June 16, and September 20, 1937. Certain amendments to the plan were made at the hearings in August, 1935. The proceedings were opened for further hearings, pursuant to Order of the Commission of September 24, 1937, and on January 10, 1938 a plan was filed by the Group of Institutional Investors, which plan was amended on January 24, 1938, and certain modifications thereto were proposed by the Debtor on February 1, 1938. Pursuant to notice, further hearings were held before the Commission upon said plan and other plans theretofore filed on February 1-4, 1938, and on March 21, and March 22, 1938. The hearings being finally closed on March 12, 1938, briefs were filed

by various parties and interveners. Thereafter, the Commission's Examiner issued a Proposed Report as to a plan of reorganization for the Debtor's property to which Exceptions were filed by various parties and interveners, together with briefs in support thereof and replies thereto. Oral arguments were held before the entire Commission on April 12, 1939. The Commission filed its Report and Order on February 12, 1940, approving a plan of reorganization for the Debtor. Thereafter, various petitions for modification of the plan so approved were filed and on June 4, 1940, the Commission filed a Supplemental Report and Order wherein it modified the plan in
37 certain respects and in its Supplemental Order of June 4, 1940, revoked and superseded the prior Order of February 12, 1940, and set out and approved a Modified Plan of Reorganization of the Debtor. Said Reports and Orders were duly certified to this Court and the Modified Plan so approved therein is the plan which came on for hearing before the Court on September 4, 1940, pursuant to Order and notice as hereinabove recited.

4. Pursuant to Order of this Court, Debtor heretofore prepared and filed with the Court lists of all known bondholders and creditors of the Debtor and the amounts and character of their debts, claims and securities and the last known postoffice address or place of business of each bondholder and creditor and a list of all known stockholders of the Debtor with the last known postoffice address or place of business of each. The Debtor and the Trustees likewise, pursuant to Order of the Court, have, from time to time, filed with the Court such statements of assets and liabilities, revenues and expenses and such schedules and have submitted such other information as was required or necessary to disclose the conduct of the Debtor's affairs, the operation of the Debtor's properties and the fairness of any proposed plan of reorganization. The Debtor and the Trustees have taken all steps and furnished all information necessary or required as preliminary to the consideration of a plan of reorganization.

5. The allowances to be paid from the Estate of the Debtor, for expenses incurred and services rendered in connection with the proceedings and plan, to May 15, 1940, by all claimants insofar as the same can be ascertained to date, are fixed and determined by separate Order and Decree this day made and filed herein, without prejudice to the right to make further allowances, within such maxi-

mum limits as may be fixed by the Commission, for
38 services rendered or expenses incurred subsequent to May 15, 1940, in connection with these proceedings and plan and also without prejudice to any modification by the Commission of its Order as to maximum limits for allowances and reconsideration by this Court of such allowances as may be so modified by the Commission.

6. The Modified Plan for Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, approved by the Supplemental Order of the Commission, dated June 4, 1940, and certified to and filed with this Court

(a) includes provisions for modifying or altering the rights of creditors and stockholders of the Debtor,

(b) provides for fixed charges in such an amount that, after due consideration of the probable prospective earnings of the property in the light of its earnings experience and all other relevant facts, there will be adequate coverage of such fixed charges by the probable earnings available for the payment thereof, and

(c) provides adequate means for the execution of the Modified Plan and complies in all respects with all of the provisions and requirements of subdivision (b) of Section 77.

7. Said Modified Plan of Reorganization

(a) is fair and equitable,

(b) affords due recognition to the rights of each class of creditors and stockholders,

(c) does not discriminate unfairly in favor of any class of creditors or stockholders,

(d) will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders, and

39 (e) provides for the payment of all costs of administration and all other allowances made, or to be made, by the Court or the Judge.

8. The approximate amounts to be paid by the Debtor, or by any corporation or corporations acquiring the Debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed, so far as they could be ascertained at the date of the hearing, are reasonable and are within such maximum limits as were fixed by the Commission. Such additional amounts as may be required to be paid out of the Debtor's Estate, or by any corporation or corporations acquiring the Debtor's assets, for services performed and expenses and fees incurred since May

15, 1940, incident to the reorganization and plan, when ascertained, will be subject to the approval of this Court within maximum limits hereafter to be fixed by the Commission.

9. Said Modified Plan of Reorganization approved by the Commission provides for the payment of all claims of the United States for taxes and the United States is not a creditor on any claims for customs duties.

10. The equity of the holders of Debtor's Preferred Stock and of Debtor's Common Stock has no value.

11. Under the terms of said Modified Plan it is provided that "the Court may cure any defect, supply any omission or reconcile any inconsistency, in such manner or to such extent as may be necessary or expedient to carry out the plan effectively". The Court finds that there are certain minor defects or omissions in the Modified Plan as certified by the Commission as follows:

(a) The designations in the Revised Appendix and the Supplemental Order of certain series of General Mortgage Bonds as "Series D" and "Series E" should be corrected to read "Series E" and "Series F", respectively, since there is no "Series D" outstanding.

(b) The word "trust", appearing in subdivision E of the Modified Plan (page 10 of the Supplemental Order, Printed Record page 7072) in the first line of the indented portion designated (a) of the paragraph providing the uses which may be made of the Reserve and Retirement Fund, should be stricken to make such provision apply to equipment obligations generally as it is believed was intended.

(c) In subdivision G of the Modified Plan (page 20 of the Supplemental Order, Printed Record page 7080) the suggested provision for the proposed new Terre Haute Lease includes "not exceeding $12,000 a year to pay the taxes and corporate expenses of the Terre Haute". The words "taxes and" should be stricken from the quoted portion, the property taxes alone being greatly in excess of the amount stated and it being the Court's understanding that it was intended that the lease should provide that the Lessee pay the taxes as now provided in the existing lease.

(d) The last paragraph of subdivision H (1) (b) of the Modified Plan (page 24 of the Supplemental Order, Printed Record, page 7083) should be amended to read:

"If the new company shall establish and maintain, in

such manner as may be permitted or required by law or lawful regulation, an operating expense account for depreciation on its roadway and structures, then the additions and betterments fund shall be paid from the reserve for depreciation on roadway and structures so credited in respect of the applicable income period, to the extent that the amount so credited to said depreciation reserve shall be adequate therefor. If, likewise, the new company shall charge to operating expenses in any year the cost of any additions and betterments, properly chargeable to capital account under the rules now in effect, then the amount of such charges shall be credited to the additions and betterments fund as a reduction of the payment into the fund for that year. However, in case the accounting rules now in effect are changed, they shall not operate to reduce the amount of funds available for additions and betterments below the amount which would be available under an application of existing accounting rules."

41 the purpose being to protect the new company against any reduction in the amounts available for additions and betterments resulting from a change in accounting rules now in effect.

(e) The second paragraph of subdivision M of the Modified Plan (page 38 of the Supplemental Order, Printed Record page 7095) should be amended to read:

"The new company shall be deemed to have assumed the obligations under existing executory contracts (except for present lease of the Terre Haute and the guaranty of the Terre Haute income-mortgage bonds), which by their terms do not terminate at or prior to the conclusion of the reorganization proceedings and which shall have been affirmed by the bankruptcy trustees prior to confirmation of the plan, and the new company shall also assume any executory contracts made by the Trustees, with the approval or authorization of the court, which by their terms do not terminate at or prior to the conclusion of the reorganization proceeding. Provided, however, that the new Company shall have such rights to terminate contracts or leases entered into by the Debtor or by the Trustees since June 29, 1935, as are set forth in said respective contracts or leases, which rights shall be exercised within the time set forth therein, and if no definite time is fixed by the terms of such contracts or leases then the right shall be exercised by the new company within six months after

the entry of the final decree in these proceedings, or such further time as may be provided in such decree."
the purpose being to carry over to the new company the right to exercise provisions for termination contained in existing contracts entered into during the pendency of the proceedings.

(f) Immediately preceding the last paragraph of subdivision M of the Modified Plan there should be added a new paragraph (page 39 of the Supplemental Order, Printed Record page 7095) reading as follows:

"The new Company shall have authority to pay, when the amount thereof has been definitely determined, all claims to the extent that they are unpaid by the Trustees falling within the class or classes of those claims which the Trustees have been authorized to pay by any order or orders of the Court."
the purpose being to authorize the new company to continue to completion payment of claims of a class or classes authorized to be paid by orders of the Court but not paid because of accounting or other difficulties encountered in determining the amounts.

42 (g) In the last paragraph of subdivision M of the Modified Plan (page 39 of the Supplemental Order, Printed Record pages 7095 and 7096) a clerical error should be corrected by changing the reference to claims arising from the disaffirmance of executory leases or contracts to read "of the Trustees" instead of "by the Trustees" and, in addition, there should be added at the end of said paragraph the following:

"Claims, arising from the disaffirmance of executory leases or contracts of the Debtor, shall constitute general unsecured claims against the Debtor, and shall be satisfied in the same manner as other general unsecured claims by the allocation of common stock in the manner provided in the plan."

This provision is deemed proper in the interest of clarity.

(h) Immediately following the second paragraph of subdivision M of the Modified Plan, (page 39 of the Supplemental Order, Printed Record page 7095) as amended by "(e)" above, there should be added the following:

"The Bankruptcy Trustees may at any time up to the final consummation of the Plan disaffirm any executory contracts of the Debtor or which constitute obligations of the Debtor entered into prior to the filing of the petition for reorganization herein and as to which the Trustees

have not assumed obligations pursuant to Court approval or authorization and any claims or damages resulting from such disaffirmance shall be treated in the same manner as herein provided for general unsecured creditors, and the Court shall retain jurisdiction for the purpose of disposing of the same. All such contracts not disaffirmed by the Trustees or in the Plan shall be deemed to have been affirmed by the Trustees and shall be assumed by the new Company."

the purpose being to extend the right of disaffirmance to as late a date as practicable and to avoid the necessity of positive action by the Trustees to affirm existing contracts desired to be continued.

12. By Orders duly entered herein the time within which claims against the Debtor might be filed and the manner of filing were fixed and the time, from time to time, was extended and due notice was given in accordance with such Orders and the time for filing such claims has long since expired. Various claims have been presented and allowed.

43 13. By Order of the Court made herein July 5, 1935, the creditors and stockholders of the Debtor were divided into classes according to the nature of their respective claims and interests, said Order providing for 31 classes numbered 1 to 31, inclusive. The classes of creditors hereinafter referred to, the claims of which have been duly allowed, are among those fixed by said Order.

14. By Order of this Court duly made and entered September 12, 1940, the Court, for the purposes of the plan of reorganization and its acceptance, allowed in the amounts and to the extent provided in said Order, the sive, and 21 and 22.

15. With the clarifications and corrections set forth in "11" above, all findings, statements and recitals of fact made by the Commission in its original Report of February 12, 1940, as modified by its Supplemental Report of June 4, 1940, and in its Supplemental Order of June 4, 1940, are supported and confirmed by the evidence and are adopted as Findings of Fact by the Court.

16. Since the Supplemental Order of the Commission of June 4, 1940, was entered, the Commission and the Court, by appropriate Orders, have authorized and approved an arrangement for refinancing unpaid matured Equipment Trust Certificates, Series A, C and D of Chicago, Milwaukee & St. Paul Railway Company, and Series

E, F, G, H, J, K and L of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, under which refinancing arrangement provision is made making available to all holders of unpaid matured Equipment Trust Certificates of said Series and Equipment Trust Certificates of said Series maturing up to December 31, 1940, the total principal amount due on said Certificates, together with accrued dividends to the date on which dividends were stopped pursuant to Notice as authorized by Court Order. All Certificates of said Series maturing after December 31, 1940, will, under the Modified Plan, be undisturbed and assumed by the new company.

44 Conclusions of Law.

1. This Court has jurisdiction of the subject matter of these proceedings and of the Debtor and its properties, its creditors and stockholders and all others having claims against or interests in the Debtor or its property.

2. The Modified Plan conforms in all respects to the requirements of Section 77, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders and conforms to the law of the land regarding the participation of the various classes of creditors and stockholders, and, with the corrections and clarifications approved under Finding of Fact 11, is approved.

3. The Finding of the Commission that the equity of the Preferred and Common Stockholders of the Debtor has no value should be affirmed.

4. Except to the extent that proposed corrections and clarifications are approved herein, all objections to the Modified Plan are overruled. It is, therefore,

Ordered, Adjudged and Decreed, That

I.

All of the Findings of Fact and Conclusions of Law hereinbefore set out shall be considered as incorporated in this Order and Decree.

II.

The Modified Plan, as certified to this Court by the Commission, will be and hereby is corrected and clarified in the following particulars, to-wit:

(a) The designations in the Revised Appendix to the Commission's Report of certain series of General Mortgage Bonds as "Series D" and "Series E", which designations likewise appear in subdivision L (6) of the Modified Plan (Page 35 of the Supplemental Order, Printed Record Page 7092) shall be corrected to read "Series E" and "Series F", respectively.

(b) In subdivision E of the Modified Plan (Page 10 of the Supplemental Order, Printed Record page 7072) the word "trust" will be stricken from the first line of the indented portion designated (a) of the paragraph providing the uses which may be made of the Reserve and Retirement Fund, which correction will extend such use to equipment obligations generally.

(c) In subdivision G of the Modified Plan (Page 20 of the Supplemental Order, Printed Record page 7080) the suggested provision for the proposed new Terre Haute Lease reading as follows: "not exceeding $12,000 a year to pay the taxes and corporate expenses of the Terre Haute" shall be corrected by striking out the words "taxes and".

(d) The last paragraph of subdivision H (1) (b) of the Modified Plan (Page 24 of the Supplemental Order, Printed Record page 7083) shall be amended to read:

"If the new company shall establish and maintain, in such manner as may be permitted or required by law or lawful regulation, an operating expense account for depreciation on its roadway and structures, then the additions and betterments fund shall be paid from the reserve for depreciation on roadway and structures so credited in respect of the applicable income period, to the extent that the amount so credited to said depreciation reserve shall be adequate therefor. If, likewise, the new company shall charge to operating expenses in any years the cost of any additions and betterments, properly chargeable to capital account under the rules now in effect, then the amount of such charges shall be credited to the additions and betterments fund as a reduction of the payment into the fund for that year. However, in case the accounting rules now in effect are changed, they shall not operate to reduce the

amount of funds available for additions and betterments below the amount which would be available under an application of existing accounting rules."

(e) The second paragraph of subdivision M of the Modified Plan (Page 38 of the Supplemental Order, Printed Record page 7095) will be amended to read:

46 "The new company shall be deemed to have assumed the obligations under existing executory contracts (except the present lease of the Terre Haute and the guaranty of the Terre Haute income-mortgage bonds), which by their terms do not terminate at or prior to the conclusion of the reorganization proceedings and which shall have been affirmed by the bankruptcy trustees prior to confirmation of the plan, and the new company shall also assume any executory contracts made by the trustees, with the approval or authorization of the court, which by their terms do not terminate at or prior to the conclusion of the reorganization proceeding. Provided, however, that the new Company shall have such rights to terminate contracts or leases entered into by the Debtor or by the Trustees since June 29, 1935, as are set forth in said respective contracts or leases, which rights shall be exercised within the time set forth therein, and if no definite time is fixed by the terms of such contracts or leases then the right shall be exercised by the new company within six months after the entry of the final decree in these proceedings, or such further time as may be provided in such decree."

(f) Immediately preceding the last paragraph of subdivision M of the Modified Plan there shall be added a new paragraph (Page 39 of the Supplemental Order, Printed Record page 7095) reading as follows:

"The new company shall have authority to pay, when the amount thereof has been definitely determined, all claims to the extent that they are unpaid by the Trustees falling within the class or classes of those claims which the Trustees have been authorized to pay by any order or orders of the Court."

(g) In the last paragraph of subdivision M of the Modified Plan (Page 39 of the Supplemental Order, Printed Record pages 7095 and 7096) a clerical error will be corrected by changing the reference to claims arising from the disaffirmance of executory leases or contracts to read "of the Trustees" instead of "by the Trustees," and, in addition, there will be added at the end of said paragraph the following:

"Claims, arising from the disaffirmance of executory leases or contracts of the Debtor, shall constitute general unsecured claims against the Debtor, and shall be satisfied in the same manner as other general unsecured claims by the allocation of common stock in the manner provided in the plan."

47 (b) Immediately following the second paragraph of subdivision M of the Modified Plan, (Page 39 of the Supplemental Order, Printed Record page 7095) as amended by "e" above, there will be added the following:

"The Bankruptcy Trustees may at any time up to the final consummation of the Plan disaffirm any executory contracts of the Debtor or which constitute obligations of the Debtor entered into prior to the filing of the petition for reorganization herein and as to which the Trustees have not assumed obligations pursuant to Court approval or authorization and any claims or damages resulting from such disaffirmance shall be treated in the same manner as herein provided for general unsecured creditors, and the Court shall retain jurisdiction for the purpose of disposing of the same. All such contracts not disaffirmed by the Trustees or in the Plan shall be deemed to have been affirmed by the Trustees and shall be assumed by the new Company."

The making of the foregoing corrections and clarifications at this time is without prejudice to the curing of any defect, supplying of any omission or reconciling of any inconsistency that hereafter may appear in the Modified Plan in connection with the accomplishment of reorganization, the Court reserving the power to cure any defect, supply any omission or reconcile any inconsistency that hereafter may appear in the Modified Plan in such manner or to such extent as may be necessary or expedient to carry out the Modified Plan effectively.

III.

The Modified Plan so certified to this Court by the Commission, with the corrections and clarifications set forth in the preceding paragraph II and the reservation contained in said paragraph, is hereby approved.

IV.

The objections to the Modified Plan, except insofar as they are covered by the corrections and clarifications in paragraph II above, are, and each of them is, hereby overruled.

48

V.

The Modified Plan hereby approved shall be submitted to each of the following named classes of creditors whose claims have been duly filed and allowed in accordance with subdivision (c) of Section 77 of the Bankruptcy Act, to-wit:

Holders of

Class 1. Milwaukee & Northern Railroad Company First Mortgage 4½% Bonds, whether or not extended and assumed by the Debtor.

Class 2. Milwaukee & Northern Railroad Company Consolidated Mortgage 4½% Bonds, whether or not extended and assumed by the Debtor.

Class 3. Chicago, Milwaukee and Gary Railway Company First Mortgage 5% Forty-Year Bonds, due April 1, 1948.

Class 4. Chicago, Milwaukee & St. Paul Railway Company General Mortgage Bonds, due May 1, 1989, of Series A, Series B, Series C, Series E, Series F.

Class 6. The Debtor's Fifty Year 5% Mortgage Bonds, due February 1, 1975.

Class 7. The Debtor's Five Per Cent Convertible Adjustment Mortgage Bonds, due January 1, 2000.

Class 21. The Debtor's secured Promissory Notes to Reconstruction Finance Corporation.

Class 22. The Debtor's secured Promissory Notes to Federal Emergency Administration of Public Works (assigned to Reconstruction Finance Corporation).

Class 31. All other claims, obligations and liabilities not hereinabove specifically described, which have been allowed by the Special Master or the Court, except creditors who are found herein not to be adversely and materially affected by the Modified Plan.

Accrued and unpaid interest on any of said claims to the extent, if any, that it is provided for and treated in the

Modified Plan, is allowed and shall be included in said claims for the purposes of the Modified Plan and its acceptance.

VI.

The Finding of the Commission that the equity of the preferred and common stockholders of the Debtor (Classes 24 and 25) has no value is affirmed.

49 VII.

The Finding of the Commission that the interests of the following classes of creditors will not be adversely and materially affected by the Modified Plan is affirmed: (designation according to nature of claims)

(a) Claims against the Debtor entitled to priority over the respective mortgages;

(b) Claims for taxes levied, assessed or accrued against the Debtor or its Trustees;

(c) Current liabilities and obligations incurred by the Trustees during the reorganization proceedings, to the extent unpaid at the date of consummation of the Modified Plan, which shall be paid in cash or assumed by the new company and which are unclassified;

(d) Executory contracts of the Debtor which have been affirmed or are not disaffirmed by the Trustees of the Debtor's Estate or pursuant to the Modified Plan and not terminating prior to the conclusion of this proceeding, which are to be assumed by the new company and which are unclassified;

(e) Executory contracts made by the Trustees of the Debtor's Estate with the approval of this Court which, by their terms, do not terminate at or prior to the conclusion of this reorganization proceeding, which are to be assumed by the new company and which are unclassified;

(f) Claims of holders of Equipment Trust Certificates, Series "M" (Class 18);

(g) Claims of holders of Equipment Trust Certificates, Series "N" (Class 19);

(h) Claim of General American Tank Car Corporation (Class 20), as holder of an equipment obligation;

50 (i) Claims of holders of Equipment Trust Certificates, Series A, C and D of Chicago, Milwaukee & St. Paul Railway Company, (Classes 8, 9 and 10), Series E, F,

G, H, J, K and L of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, (Classes 11, 12, 13, 14, 15, 16 and 17), Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "O", "P", "Q", "R", "S", "T" and "U" and any other Trustees' equipment obligations, leases or sales agreements, and Trustees' Certificates of Indebtedness heretofore issued or as to which the Trustees have assumed obligation, and any other Equipment Trust Certificates or other equipment obligations, leases or sales agreements or Certificates of Indebtedness which may be issued by the Trustees or as to which they may assume obligation before the consummation of the Modified Plan; and

(j) All claims which the Commission has found have been or will be paid in cash under the Modified Plan.

VIII.

Upon confirmation of the Modified Plan by the Court, the provisions thereof affecting the Terre Haute Bondholders, required by said plan to be submitted to them for acceptance or rejection, shall, together with copies of the Commission's Reports and its Supplemental Order of June 4, 1940, relating to said plan, and a copy of the Opinion of the Court filed herein on October 21, 1940, be submitted by the Reorganization Committee provided for in said plan to the holders of The Bedford Belt Railway Company First Mortgage 5% Bonds, Southern Indiana Railway Company First Mortgage 4% Bonds, Chicago, Terre Haute and Southeastern Railway Company First and Refunding Mortgage Fifty Year 5% Bonds and Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Fifty-Year 5% Bonds (Classes 26, 27, 28 and 29).

51

IX.

The Clerk of this Court shall forthwith send certified copies of the Opinion of this Court filed herein and of the foregoing Findings of Fact, Conclusions of Law and this Order and Decree to the Commission.

M. L. Igoe,
District Judge.

Dated November 13, 1940.

And afterwards, to wit, on the 13th day of November, A. D. 1940, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit: Entered Nov. 13, 1940.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER.

This cause coming on to be heard upon the motion of Guggenheimer & Untermyer and Sabath, Perlman, Goodman & Rein, attorneys for Anglo-Continentale Treuhand, A. G., intervenor herein, and this cause coming on to be heard upon the motion of the trustees herein for the entry of a decree pursuant to the memorandum of this court, dated October 21, 1940, and it appearing to the court that all parties to this proceeding have received due and proper notice of said motion and all parties being properly before the court, and the court having heard the arguments and statements of counsel and having examined the files and records herein and being fully advised in the premises,

It Is Hereby Ordered that the memorandum of objections to and suggestions in respect of the modified plan of reorganization and claim for equitable treatment filed herein on July 31, 1940 by Anglo-Continentale Treuhand, A. G., stand as the objections of Anglo-Continentale Treuhand, A. G., to the entry of the findings of fact, conclusions of law, orders and decree confirming the modified plan of reorganization approved by the Interstate Commerce Commission February 12, 1940 as modified June 4, 1940.

Enter:

Igoe,
United States District Judge.

Dated November 13, 1940.

Filed Dec. 14, 1940.

242 And on, to wit, the 14th day of December, A. D. 1940, came the Debtor by its attorneys and filed in the Clerk's office of said Court its certain Notice of Appeal in words and figures following, to wit:

243 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

In Proceedings for the Reorganization of a Railroad.

In the Matter of
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Debtor.
} No. 60463.

NOTICE OF APPEAL OF DEBTOR FROM ORDER APPROVING PLAN OF REORGANIZATION.

Notice Is Hereby Given that Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a railroad corporation, Debtor herein, hereby appeals to the United States Circuit Court of Appeals for the Seventh Circuit from all parts of the order and decree entered herein on November 13, 1940, approving the Plan of Reorganization for the Debtor as certified to the District Court by the Interstate Commerce Commission, including the Findings of Fact, Conclusions of Law and Order and Decree Approving Plan.

Chicago, Milwaukee, St. Paul and
Pacific Railroad Company,
By Pierce & Greer,
40 Wall Street,
New York City,

Gardner, Carton & Douglas,
First National Bank Building,
Chicago, Illinois,
Its Attorneys.

232 And on, to wit, the 14th day of December, A. D. 1940, came the Debtor by its attorneys and filed in the Clerk's office of said Court its certain Statement of Points in words and figures following, to wit: Filed Dec. 14, 1940.

233 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

STATEMENT OF POINTS UPON WHICH APPELLANT, CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEBTOR HEREIN, WILL RELY ON ITS APPEAL FROM THE ORDER OF THE ABOVE COURT MADE NOVEMBER 13, 1940, APPROVING THE PLAN OF REORGANIZATION FOR THE DEBTOR CERTIFIED TO THE COURT BY THE INTERSTATE COMMERCE COMMISSION.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a corporation organized under the laws of the State of Wisconsin and the Debtor herein, which has heretofore appealed to the United States Circuit Court of Appeals for the Seventh Circuit from the order of the above District Court made November 13, 1940, approving a Plan of Reorganization for the Debtor, hereby makes the following statement of points upon which it will rely on said appeal:

I.

The District Court erred in its conception of the functioning of the Court under Section 77 of the Bankruptcy Act and the law of the land and did not exercise the independent judicial judgment that the Court was required to exercise by said Section 77 and by the law of the land.

II.

The District Court proceeded upon the erroneous assumption and theory that it was entitled to exercise or was permitted to exercise only such jurisdiction or authority as might be exercised by a Court in a proceeding to set aside an order of the Interstate Commerce Commission under the

Act of Congress commonly known as the "Urgent
234 Deficiencies Act", approved October 22, 1913, and the Acts of Congress amendatory thereof.

III.

The District Court erred in approving a Plan of Reorganization for the Debtor, certified to it by the Interstate Commerce Commission, which is unfair and inequitable and fails to give due recognition to the Debtor's unsecured creditors and stockholders and discriminates unfairly in favor of the Debtor's Mortgage Bonds and does not comply with the law of the land requiring the participation of the Debtor's unsecured creditors and the holders of the Debtor's Preferred Stock and Common Stock in the following particulars, among others:

(1) Said Plan of Reorganization is applied to the Debtor's capital structure as it existed on January 1, 1939, instead of the Debtor's capital structure as it existed on July 1, 1935, the nearest convenient accounting date to the date of the filing of the petition herein and the fixation of rights thereunder, in violation of Subsection (1) of Section 77 of the Bankruptcy Act and Section 103 of the United States Code Annotated, being the former Section 63 of the Bankruptcy Act.

(2) Said Plan of Reorganization gives recognition to large amounts of interest accrued but unearned subsequent to July 1, 1935, in violation of Subsection (1) of Section 77 of the Bankruptcy Act and Section 103 of the United States Code Annotated, being the former Section 63 of the Bankruptcy Act.

(3) Said Plan of Reorganization attempts to exclude the Debtor's unsecured creditors and the holders of its Preferred Stock and Common Stock from participation therein, although the undisputed evidence shows a substantial value for the equity represented by the
235 Debtor's unsecured indebtedness and Preferred Stock and Common Stock.

(4) Said Plan of Reorganization attempts to take the Debtor's properties belonging in equity to its unsecured creditors and holders of Preferred Stock and Common Stock and transfer it to the holders of the Debtor's Mortgage Bonds, without any appraisal, without any valuation and without due process of law.

(5) Said Plan of Reorganization attempts arbitrarily and without any express or implied authority under Section 77 of the Bankruptcy Act to so limit the capitalization of the Reorganized Company as to exclude the Debtor's unsecured creditors and the holders of its Preferred Stock and Common Stock from participating therein.

(6) Said Plan of Reorganization attempts arbitrarily and without any express or implied authority under Section 77 of the Bankruptcy Act to assign to new Common Stock of the Reorganized Company having no par value a value of $100, for the purpose of estimating the total capitalization and a lower value or values in settlement of the claims of creditors so as to limit the total number of shares to an amount that will leave none available for the owners of the equity represented by the Debtor's unsecured debt and its Preferred Stock and Common Stock.

IV.

The District Court erred in approving a Plan of Reorganization making no provision for the Debtor's Preferred Stock and Common Stock.

V.

The District Court erred in approving a Plan of Reorganization for the Debtor providing for the setting up
236 or creation of mandatory funds of $2,500,000 and discretionary funds of $2,500,000 out of estimated future income without giving credit for such earnings to the Debtor's unsecured creditors and Preferred and Common stockholders.

VI.

The District Court erred in approving a Plan of Reorganization for the Debtor wherein the capitalization of estimated future earnings is substituted for the elements of value required to be considered by the law of the land.

VII.

The District Court erred in approving a Plan of Reorganization for the Debtor designed to take large amounts of capital invested in the Debtor's property under the protection of the Fifth Amendment and to dedicate such property to the public use without just compensation or without any compensation.

VIII.

The District Court erred in approving a Plan of Reorganization for the Debtor certified to it by the Interstate Commerce Commission without proper or adequate findings of fact to support the conclusions of the Interstate Commerce Commission.

IX.

The District Court erred in approving a Plan of Reorganization for the Debtor which fails to meet the requirements of Subsections (b), (c) and (e), of Section 77 of the Bankruptcy Act and in refusing to disapprove such Plan of Reorganization and refer the proceeding back to the Interstate Commerce Commission in accordance with the provisions of said Subsection (e).

Dated, December 14, 1940.

Chicago, Milwaukee, St. Paul and
Pacific Railroad Company,
By Pierce & Greer,
40 Wall Street,
New York City,

Gardner, Carton & Douglas,
First National Bank Building,
Chicago, Illinois,
Its Attorneys.

79 And on, to wit, the 13th day of December, A. D. 1940, came the St. Louis Union Trust Co., by its attorneys and filed in the Clerk's office of said Court its certain Notice of Appeal in words and figures following, to wit:

80 IN THE DISTRICT COURT OF THE UNITED STATES

Filed Dec. 13, 1940.

For the Northern District of Illinois,

Eastern Division.

In Proceedings for the Reorganization of a Railroad.

In the Matter of
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Debtor.
No. 60463.

NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS.

Notice Is Hereby Given that St. Louis Union Trust Company and Illinois State Trust Company, as Trustees in a certain mortgage deed of trust dated as of April 1, 1908, executed by the Chicago, Milwaukee and Gary Railway Company, securing an issue of Chicago, Milwaukee and Gary Railway Company First Mortgage 5% Forty Year Gold Bonds described in and secured by said indenture, and Tower Grove Bank & Trust Company, a corporation, St. Louis Realty & Securities Company, a corporation, and Loraine G. Franciscus, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the Findings of Fact, Conclusions of Law and Order and Decree Approving Plan of Reorganization for Debtor entered in the above entitled proceedings on Wednesday, the 13th day of November, A. D. 1940.

Robert H. McRoberts,
1630 Boatmen's Bank Building,
St. Louis, Missouri,
Walter S. Underwood,
134 South LaSalle Street,
Chicago, Illinois,
Attorneys for St. Louis Union Trust Company and Illinois State Trust Company, as Trustees, Tower Grove Bank & Trust Company, St. Louis Realty & Securities Company and Loraine G. Franciscus, Appellants.

Bryan, Williams, Cave & McPheeters,
Bryan, Williams, Cave & McPheeters,
Scott, MacLeish & Falk,
Scott, MacLeish & Falk,
Of Counsel.

Filed 13, 1941.

85 And on, to wit, the 13th day of January, A. D. 1941, came the St. Louis Trust Company and Illinois Trust Co. by their attorneys and filed in the Clerk's office of said Court their certain Statement of Points in words and figures following, to wit:

86 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

STATEMENT OF POINTS ON APPEAL FROM ORDER AND DECREE APPROVING PLAN OF REORGANIZATION.

Now come St. Louis Union Trust Company and Illinois State Trust Company, as Trustees in a certain mortgage deed of trust dated as of April 1, 1908, executed by the Chicago, Milwaukee and Gary Railway Company, securing an issue of Chicago, Milwaukee and Gary Railway Company First Mortgage 5% Forty Year Gold Bonds described in and secured by said indenture (hereinafter sometimes referred to as "Gary Bonds"), and Tower Grove Bank & Trust Company, a corporation, St. Louis Realty & Securities Company, a corporation, and Loraine G. Franciscus, and pursuant to Rule 75(d) of the Rules of Civil Procedure for the District Court of the United States, and Rule 9 of the Rules of the United States Circuit Court of Appeals for the Seventh Circuit, jointly and severally file this Statement of Points on Appeal from the Findings of Fact, Conclusions of Law and Order and Decree Approving Plan of Reorganization for Debtor dated November 13, 1940, and entered in the above entitled proceeding on said date. Said points are as follows:

1. The Court erred in finding as a matter of fact (Finding of Fact No. 7) that the Modified Plan of Reorganization of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, as certified to the Court by the Interstate Commerce Commission (hereinafter called the "Plan"):

87 "(a) is fair and equitable,

(b) affords due recognition to the rights of each class of creditors and stockholders,

(c) does not discriminate unfairly in favor of any class of creditors or stockholders,

(d) will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders."

2. The Court erred in finding as a matter of fact (Finding of Fact No. 4) that the Debtor and the Debtor Trustees have filed with the Court such information "as was required or necessary to disclose the conduct of Debtor's affairs, the operation of the Debtor's properties and the fairness of any proposed plan of reorganization"; and that "The Debtor and the Trustees have taken all steps and furnished all information necessary or required as preliminary to the consideration of a plan of reorganization."

3. The Court erred in incorporating by reference in its Finding of Fact No. 15 all findings, statements and recitals of fact made by the Interstate Commerce Commission in so far as such findings, statements and recitals of fact are contrary to, or fail to give effect to, the objections dated July 26, 1940, filed with the Court by these appellants.

4. The Court erred in concluding as a matter of law (Conclusion No. 2) that:

"The Modified Plan conforms in all respects to the requirements of Section 77, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders and conforms to the law of the land regarding the participation of the various classes of creditors and stockholders."

5. The Court erred in concluding as a matter of law (Conclusion No. 4) that:

"Except to the extent that proposed corrections and clarifications are approved herein, all objections to the Modified Plan are overruled."

88 and in thus overruling each and every one of the objections dated July 26, 1940, filed with the Court by these appellants.

6. The Court erred as a matter of law (decretal paragraph No. IV) in ordering, adjudging and decreeing that the objections dated July 26, 1940, filed with the Court by these appellants, be overruled.

7. The Court erred as a matter of law (decretal paragraph No. III) in ordering, adjudging and decreeing that:

"The Modified Plan so certified to this Court by the Commission, with the corrections and clarifications set

forth in the preceding paragraph II and the reservation contained in said paragraph, is hereby approved."

8. The Court erred, as a matter of law, in failing and refusing to find, adjudge and decree that the Interstate Commerce Commission had erred in failing to determine the value of the property subject to the lien of the indenture securing said Gary Bonds, and in failing to certify such value to the Court in its Report on the Plan, although it was necessary for the Commission to determine such value for the purpose of determining whether or not the plans of reorganization proposed to the Commission and the Modified Plan of Reorganization approved by the Commission were fair and equitable, afforded due recognition to the rights of each class of creditors and stockholders, did not discriminate unfairly in favor of any class of creditors or stockholders, and would conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders.

9. The Court erred in failing to make adequate or any findings of fact in respect to the value of the property subject to the lien of the indenture securing said Gary Bonds, and in failing to award to the holders of said Gary Bonds the securities and shares in the reorganized company to which such bondholders are lawfully and equitably
89 entitled by virtue of their priority of lien and position in ownership of the Debtor's assets, and in failing to recognize such priority of the holders of said Gary Bonds in respect of those classes of creditors junior thereto.

10. The Court erred in failing to grant each and every one of the claims for equitable treatment set forth and contained in the objections dated July 26, 1940, filed with the Court by these appellants.

11. The Court erred in failing to find that said Plan is not fair and equitable within the meaning of Section 77 of the Bankruptcy Act, as amended, does not afford due recognition to the rights of the holders of said Gary Bonds, discriminates unfairly in favor of other classes of creditors, and will not conform to the requirements of the law of the land regarding participation of the various classes of creditors.

12. The Court erred in failing to hold that said Plan constitutes a taking of the property of the holders of said Gary Bonds without due process of law, contrary to the Fifth Amendment of the Constitution of the United States of America.

13. The Court erred in making and entering said Findings of Fact, Conclusions of Law and Order and Decree in so far as it affects the rights of these appellants.

14. The Court erred in approving the Modified Plan of Reorganization certified to the Court by the Interstate Commerce Commission in so far as said Plan of Reorganization affects the rights of these appellants.

15. The Court erred in approving said Plan of Reorganization in that said Plan provides that the holders of the $3,000,000.00 principal amount of Gary Bonds shall receive for their total claim of $3,000,000.00 principal and
90 $562,500.00 accrued interest to December 1, 1938, $2,671,875.00 par value of 5% Preferred Stock and 8906¼ shares of Common Stock of no par value, instead of providing fair and equitable treatment for the holders of such Gary Bonds.

Dated January 13, 1941.

St. Louis Union Trust Company and Illinois State Trust Company, as Trustees, Tower Grove Bank & Trust Company, St. Louis Realty & Securities Company and Loraine G. Franciscus,

By Robert H. McRoberts,
Robert H. McRoberts.
Bryan, Williams, Cave & McPheeters,
Bryan, Williams, Cave & McPheeters,
1630 Boatmen's Bank Building,
St. Louis, Missouri.
Scott, MacLeish & Falk,
Scott, MacLeish & Falk,
134 South LaSalle Street,
Chicago, Illinois.

Their Attorneys.

Certificate of Service.

I hereby certify that I have this day served the foregoing Statements of Points on Appeal from Order and Decree Approving Plan of Reorganization upon all parties of record in this proceeding, by mailing a copy thereof, properly addressed, to each party of record.

Dated at St. Louis, Missouri, this 13th day of January, 1941.

Robert H. McRoberts,
Counsel for St. Louis Union Trust Company and Illinois State Trust Company, as Trustees, Tower Grove Bank & Trust Company, St. Louis Realty & Securities Company and Loraine G. Franciscus, Appellants.

Filed Dec. 13, 1940

91 And on, to wit, the 13th day of December, A. D. 1940 came the Israel A. Abrams et al., by their attorneys and filed in the Clerk's office of said Court their certain Notice of Appeal in words and figures following, to wit:

92 In the District Court of the United States

For the Northern District of Illinois,

Eastern Division.

In Proceedings for the Reorganization of a Railroad.

In the Matter of
Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor. } Number 60463.

NOTICE OF JOINT AND SEVERAL APPEAL FROM THE ORDER APPROVING THE REORGANIZATION PLAN.

A joint and several appeal is hereby taken by Israel A. Abrams, Sol Abrams, Henrietta Chatiner and Charles J. Rosenbloom to the United States Circuit Court of Appeals for the Seventh Circuit, from the order of the court made

and entered November 13, 1940, overruling the objections to the Report of the Interstate Commerce Commission as modified and approving the Plan of Reorganization, to the end that said order be reversed with directions to sustain the objections.

Israel A. Abrams, Sol Abrams, Henrietta Chatiner and Charles J. Rosenbloom,

Appellants.

By: Meyer Abrams,
Meyer Abrams,

Their Attorney.

Dated at Chicago, Illinois, this 13th day of December, A. D. 1940.

Endorsed: Filed Dec 13 1940 Hoyt King, Clerk.

96 And on, to wit, the 13th day of December, A. D. 1940 came the Israel A. Abrams et al., by their attorneys and filed in the Clerk's office of said Court their certain Statement of Points To Be Relied Upon in words and figures following, to wit: Filed Dec. 13, 1940.

97 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

STATEMENT OF POINTS ON APPEAL FROM ORDER AND DECREE APPROVING PLAN OF REORGANIZATION.

Now comes Israel A. Abrams, et al., Intervenors, by Meyer Abrams, their attorney, and file their Statement of Points on appeal from the Decree entered November 13, 1940, approving the Plan of Reorganization, which points are as follows:

1. The Court erred in overruling the objections of these intervenors to the Modified Report of the Commission and in approving the Plan and in entering the decree of November 13, 1940, and it was its duty to find and to conclude as follows:

"1. The complete change of the position of the Adjustment Mortgage Bondholders from secured creditors to Common Stockholders upon the arbitrary allotment of

1,788,655 in Common Shares on a stated value of $100 per share, based on capitalization, but not on value, is unfair and inequitable and deprives such class of their property without due process of law in contravention of the Fifth Amendment.

"2. If the position of the Adjustment Mortgage Bondholders is to be completely changed to that of Common Stockholders then they should receive Common Stock for the full value of their securities, based on the debt and accrued interest as of the date when the Plan becomes effective, namely, December 31, 1938, on the same basis as the other creditors are treated and not as of the date of the filing of the petition, which is applicable only
98 to this class under the Plan. This is in violation of the Act which prohibits discrimination among creditors and is contrary to the Bankruptcy Law.

"3. If the position of the Adjustment Mortgage Bondholders is to be completely altered to that of Common Stockholders then the complete management should be lodged in them, and the secured creditors who are given 100 per cent security for their debts ought not to have any voice in the management but merely supervision for the performance of the covenants and the right to vote the preferred shares in the event of default only.

"4. The surrender of the claim of the Adjustment Mortgage Bondholders on the free assets in favor of the secured creditors and the Debtor, is unfair and inequitable and deprives them of their creditors' position without just compensation in violation of the Fifth Amendment."

2. The Court erred in finding as a matter of fact that the Modified Plan of Reorganization was fair and equitable, afforded due recognition to the rights of each class of creditors, including the Adjustment Mortgage Bonds, and that it does not discriminate unfairly in favor of any class and that it conforms to the requirement of the law of the land; that it was its duty to find that the Plan is unfair and inequitable; that it did not give due recognition to the rights of the Adjustment Mortgage Bonds; that it discriminated unfairly in favor of the other creditors and that it did not conform to the law of the land.

Dated at Chicago, Illinois, this 18th day of December, A. D. 1940.

Meyer Abrams,
Meyer Abrams,
Attorney for Israel A. Abrams, et al., Intervenors-Appellants.

99 And on, to wit, the 18th day of December, A. D. 1940 came the H. C. Orton et al., by their attorneys and filed in the Clerk's office of said Court their certain Notice of Appeal in words and figures following, to wit: Filed Dec. 18, 1940.

100 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois

Eastern Division.

In Proceedings for the Reorganization of a Railroad.

In the Matter of
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Debtor. } No. 60463.

NOTICE OF APPEAL.

Notice Is Hereby Given that H. C. Orton, Karl A. Meyer, Rucker Penn, J. B. Johnston and D. C. Wolf, as Protective Committee for the Holders of Preferred Stock of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from all parts of the order and decree entered herein on November 13, 1940, approving the Plan of Reorganization for the Debtor as certified to the District Court by the Interstate Commerce Commission, including the findings of fact, conclusions of law, and order and decree approving Plan.

H. C. Orton,
Karl A. Meyer,
Rucker Penn,
J. B. Johnston,
D. C. Wolf,
Preferred Stockholders Committee, as aforesaid.

By Edward R. Johnston.
Albert K. Orschel,
Its Attorneys.
11 S. La Salle Street, Chicago, Illinois.

Filed Dec. 18, 1940.

105 And on, to wit, the 18th day of December, A. D. 1940, came the H. C. Orton et al., by their attorneys and filed in the Clerk's office of said Court their certain Statement of Points in words and figures following, to wit:

106 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—60463) • •

STATEMENT OF POINTS ON APPEAL FROM ORDER AND DECREE APPROVING PLAN OF REORGANIZATION.

Now come, H. C. Orton, Karl A. Meyer, Rucker Penn, J. B. Johnston and D. C. Wolf, as Protective Committee for the Holders of Preferred Stock of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter called the "Committee"), and pursuant to Rule 75(d) of the Rules of Civil Procedure for the District Courts of the United States and Rule 9 of the Rules of the United States Circuit Court of Appeals for the Seventh Circuit, file this statement of points on appeal from the order and decree of this Court dated November 13, 1940 approving, with certain corrections, clarifications and reservations, the Modified Plan of Reorganization certified to the Court by the Interstate Commerce Commission. Said points are as follows:

1. The Court erred in entering said order, judgment and decree insofar as it affects the rights of the preferred stockholders of the Debtor.

2. The Court erred in approving said Plan of Reorganization insofar as said Plan affects the rights of the preferred stockholders of the Debtor.

107 3. The Court erred in finding as a matter of fact (finding of fact Number 7) that the Modified Plan of Reorganization of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, as certified to the Court by the

Interstate Commerce Commission (hereinafter called the "Plan"):

"(a) is fair and equitable;

(b) affords due recognition to the rights of each class of creditors and stockholders;

(c) does not discriminate unfairly in favor of any class of creditors or stockholders;

(d) will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders."

4. The Court erred in finding as a matter of fact (finding of fact Number 10) that:

"The equity of the holders of Debtor's Preferred Stock and of Debtor's Common Stock has no value."

5. The Court erred in concluding as a matter of law (conclusion Number 2) that:

"The Modified Plan conforms in all respects to the requirements of Section 77, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders and conforms to the law of the land regarding the participation of the various classes of creditors and stockholders."

6. The Court erred in concluding as a matter of law (conclusion Number 3) that:

"The Finding of the Commission that the equity of the Preferred and Common Stockholders of the Debtor has no value should be affirmed."

7. The Court erred as a matter of law (decretal paragraph Number III) in ordering, adjudging and decreeing that:

"The Modified Plan so certified to this Court by the Commission, with the corrections and clarifications set forth in the preceding paragraph II and the reservation contained in said paragraph, is hereby approved."

108 8. The Court erred as a matter of law (decretal paragraph Number VI) in ordering, adjudging and decreeing that:

"The Finding of the Commission that the equity of the preferred and common stockholders of the Debtor (Classes 24 and 25) has no value is affirmed."

9. The Court erred in refusing to permit any testimony on possible economies resulting from consolidation of the Debtor with the Chicago & North Western Railway Company.

Dated: December 18, 1940.

H. C. Orton,
Karl A. Meyer,
Rucker Penn,
J. B. Johnston,
D. C. Wolf,
Protective Committee as aforesaid.
By Edward R. Johnston, and
Albert K. Orschel,
Its Attorneys,
11 South La Salle Street,
Chicago, Illinois.

Filed Dec. 13, 1940.

109 And on, to wit, the 13th day of December, A. D. 1940; came the Guaranty Trust Company of New York by its attorneys and filed in the Clerk's office of said Court its certain Notice of Appeal in words and figures following, to wit:

110 In the District Court of the United States

For the Northern District of Illinois,

Eastern Division.

In Proceedings for the Reorganization of a Railroad.

In the Matter of
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Debtor. } No. 60463.

NOTICE OF APPEAL OF GUARANTY TRUST COMPANY OF NEW YORK AND MERREL P. CALLAWAY, AS FIFTY YEAR MORTGAGE TRUSTEES.

Notice Is Hereby Given that Guaranty Trust Company of New York and Merrel P. Callaway, as Trustees under the Mortgage and Deed of Trust of Chicago, Milwaukee, St. Paul and Pacific Railroad Company dated as of Febru-

ary 2, 1925, hereby appeal to the Circuit Court of Appeals for the Seventh Circuit from the Order and Decree of this Court made and entered November 13, 1940, incorporating Findings of Fact and Conclusions of Law, and approving, with certain corrections, clarifications and reservations, the plan of reorganization as approved by the Report and Order of the Interstate Commerce Commission of February 12, 1940 and the Supplemental Report and Order of the Interstate Commerce Commission of June 4, 1940 and certified to the Court.

Dated: December 13, 1940.

Davis Polk Wardwell Gardiner & Reed,
By Thomas O'G. FitzGibbon,
Thomas O'G. FitzGibbon,
a member of said firm.
15 Broad Street,
New York, N. Y.

Tenney, Harding, Sherman & Rogers,
By Henry F. Tenney,
Henry F. Tenney,
a member of said firm.
120 South LaSalle Street,
Chicago, Ill.

Solicitors for Guaranty Trust Company of New York and Merrel P. Callaway, as Trustees.

Edwin S. S. Sunderland,
Henry F. Tenney,
Thomas O'G. FitzGibbon,
Roger R. Leech,
George John Miller,
Of Counsel.

116 And on to wit, the 13th day of December, A. D. 1940, came the Guaranty Trust Company of New York by its attorneys and filed in the Clerk's office of said Court its certain Statement of Points on Appeal from Order and Decree Approving Plan of Reorganization in words and figures following, to wit:

Filed Dec. 13, 1940. 117 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

STATEMENT OF POINTS ON APPEAL FROM ORDER AND DECREE APPROVING PLAN OF REORGANIZATION.

Now Come Guaranty Trust Company of New York and Merrel P. Callaway, as Trustees under the Mortgage and Deed of Trust of Chicago, Milwaukee, St. Paul and Pacific Railroad Company dated as of February 2, 1940 (hereinafter called the "Fifty Year Mortgage"), and pursuant to Rule 75(d) of the Rules of Civil Procedure for the District Courts of the United States and Rule 9 of the Rules of the United States Circuit Court of Appeals for the Seventh Circuit, file this statement of points on appeal from the Order and Decree of this Court dated November 13, 1940, approving, with certain corrections, clarifications and reservations, the Modified Plan of Reorganization certified to the Court by the Interstate Commerce Commission. Said points are as follows:

1. The Court erred in finding as a matter of fact (finding of fact No. 7) that the Modified Plan of Reorganization of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, as certified to the Court by the Interstate Commerce Commission (hereinafter called the "Plan"):

"(a) is fair and equitable,

(b) affords due recognition to the rights of each class of creditors and stockholders,

118 (c) does not discriminate unfairly in favor of any class of creditors or stockholders,

(d) will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders".

2. The Court erred in finding as a matter of fact (finding of fact No. 4) that the Debtor and the Debtor Trustees have filed with the Court such information "as was required or necessary to disclose the conduct of Debtor's affairs, the operation of the Debtor's properties and the fairness of any proposed plan of reorganization"; and that "The Debtor and the Trustees have taken all steps and furnished all information necessary or required as preliminary to the consideration of a plan of reorganization."

3. The Court erred in incorporating by reference in its finding of fact No. 15 all findings, statements and recitals of fact made by the Interstate Commerce Commission in so far as such findings, statements and recitals of fact are contrary to, or fail to give effect to, the objections dated August 1, 1940, filed with the Court by the Fifty Year Mortgage Trustees.

4. The Court erred in concluding as a matter of law (conclusion No. 2) that:

"The Modified Plan conforms in all respects to the requirements of Section 77, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders and conforms to the law of the land regarding the participation of the various classes of creditors and stockholders".

5. The Court erred in concluding as a matter of 119 law (conclusion No. 4) that:

"Except to the extent that proposed corrections and clarifications are approved herein, all objections to the Modified Plan are overruled",

and in thus overruling each and every one of the objections dated August 1, 1940, filed with the Court by the Fifty Year Mortgage Trustees, said objections being as follows:

"[The Trustees of the Fifty-Year Mortgage, securing $106,395,096 principal amount of Chicago, Milwaukee, St. Paul and Pacific Railroad Company Fifty Year Mortgage Gold Bonds, Series A, due February 1, 1975 (hereinafter sometimes called the '5s of 75'), object] as follows to the modified plan of reorganization approved by the Interstate Commerce Commission in its Supplemental Order of June 4, 1940, and certified by the Commission to the Court on June 14, 1940:

1. To the inclusion of the mandatory portion of the Additions and Betterments Fund as a fixed charge.

2. To the allocation to the 5s of 75 of new securities of junior rank, and to the allocation to the 5s of 75 of only 15% of the claim thereon in new General Mortgage Income Bonds, Series B, 60% in new Preferred Stock and 25% in new Common Stock.

3. To the failure to afford due recognition to the value of the junior lien of the 5s of 75 on the Debtor's lease-hold interest in Chicago, Terre Haute and Southeastern Railway Company or to the junior lien of the 5s of 75 on Chicago,

Terre Haute and Southeastern Railway Company bonds and stock.

4. To the failure to afford due recognition to the junior lien of the 5s of 75 on the other securities pledged to secure the Debtor's First and Refunding Mortgage.

5. To the failure to give due recognition to the 'earning power and all other relevant facts' relating to the 5s of 75, as required by Section 77 of the Bankruptcy Act as amended and by the law of the land.

6. To the failure at any stage in these proceedings to evolve a formula for the segregation of earnings that can serve as a proper basis for a major disruption of liens on a long-range basis.

7. To the use of inadequate data or unsound principles or both in the formula for the segregation of earnings with respect to:

(a) selection of a truly representative test period;
(b) freight revenues;
(c) other revenues;
(d) haul of company freight;
(e) operating expenses, and
(f) equipment rentals.

8. To the failure to make a study of the earnings of the properties subject to the lien of the General Mortgage.

9. To the failure to make a severance study or a contributive income study.

10. To the failure to give due consideration to the position and value of the Western Lines in the event of consolidation or of coordination of facilities.

11. To the failure to provide that the Sinking Fund for General Mortgage Income Bonds be applied equally to Series A and Series B thereof, or alternatively to provide a separate Sinking Fund for Series A and Series B thereof.

12. To the failure to accord the new Preferred Stock its proper characteristics or adequate protection with respect to:

(a) voting rights;
(b) future issuance of securities senior thereto; and
(c) conversion privileges.

13. To any treatment of the 5s of 75 that is not fair and equitable and does not conform to the requirements of the law of the land, in accordance with the provisions of Section 77."

6. The Court erred as a matter of law (decretal paragraph No. IV) in ordering, adjudging and decreeing that

the objections dated August 1, 1940, filed with the Court by the Fifty Year Mortgage Trustees set forth in pre-
121 ceding paragraph 5, be overruled.

7. The Court erred as a matter of law (decretal paragraph No. III) in ordering, adjudging and decreeing that:

"The Modified Plan so certified to this Court by the Commission, with the corrections and clarifications set forth in the preceding paragraph II and the reservation contained in said paragraph, is hereby approved."

Dated: December 13, 1940.

Davis Polk Wardwell Gardiner & Reed,
By Thomas O'G. FitzGibbon,
Thomas O'G. FitzGibbon,
a member of said firm.
15 Broad Street,
New York, N. Y.

Tenney, Harding, Sherman & Rogers,
By Henry F. Tenney,
Henry F. Tenney,
a member of said firm.
120 South La Salle Street,
Chicago, Ill.

Solicitors for Guaranty Trust Company of New York and Merrel P. Callaway, as Trustees.

Edwin S. S. Sunderland,
Henry F. Tenney,
Thomas O'G. FitzGibbon,
Roger R. Leech,
George John Miller,
Of Counsel.

122 Certificate of Service.

I hereby certify that I have this day served the foregoing statement of points on appeal upon all parties of record in this proceeding, by mailing a copy thereof properly addressed to each party of record.

Dated at New York, N. Y., this 13th day of December, 1940.

Thomas O'G. FitzGibbon,
Of Counsel for Fifty Year Mortgage Trustees.

Filed Dec. 13, 1940.

127 And on, to wit, the 13th day of December, A. D. 1940 came the Chicago Terre Haute & Southeastern Railway Group by Their attorneys and filed in the Clerk's office of said Court Their certain Notice of Appeal in words and figures following, to wit:

128 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

In Proceedings for the Reorganization of a Railroad.

In the Matter of
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Debtor. } No. 60463.

NOTICE OF APPEAL.

Notice Is Hereby Given that

Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bondholders' Committee,

Mercantile National Bank of Chicago and Benjamin H. Rubenzik, Trustees under the Indenture of Trust of the Bedford Belt Railway Company dated June 1, 1898,

Chicago, Terre Haute and Southeastern Railway Company First Lien Bondholders Committee,

Girard Trust Company, Substituted Trustee under Deed of Trust dated February 1, 1901, of the Southern Indiana Railway Company and Trustee under Supplemental Mortgage dated November 30, 1910, of Chicago, Terre Haute and Southeastern Railway Company, and

Massachusetts Mutual Life Insurance Company and The Prudential Insurance Company of America,

intervenors in the above entitled cause, and

Chicago, Terre Haute and Southeastern Railway Company,

The First National Bank of Chicago as Trustee under an Indenture dated December 1, 1910, between Chicago, Terre Haute and Southeastern Railway Company and First Trust and Savings Bank and Louis Boisot, Trustees. and

Continental Illinois National Bank and Trust Company of Chicago, as Trustee under Trust Indenture dated December 1, 1910, between Chicago, Terre Haute and Southeastern Railway Company and Illinois Trust and Savings Bank and William H. Henkle, Trustees,

objectors but not intervenors, hereby jointly and severally appeal to the United States Circuit Court of Appeals 129 for the Seventh Circuit from that part of the order, judgment and decree (including findings of fact and conclusions of law) of this Court approving plan of reorganization for Debtor, made and entered herein on November 13, 1940, which overrules the objections of the above named appellants to the plan of reorganization of the Debtor herein as certified to this Court by the Interstate Commerce Commission, and from that part of said order, judgment and decree which approves said plan of reorganization, as amended, and from all parts of said order, judgment and decree which are contrary to or inconsistent with said objections or the claims of said above named appellants for equitable treatment.

West & Eckhart,
West & Eckhart,
William A. McSwain,
William A. McSwain,
38 South Dearborn Street,
Chicago, Illinois,
Attorneys for Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bondholders' Committee.

Gann, Secord, Stead & McIntosh,
Gann, Secord, Stead & McIntosh,
135 South La Salle Street,
Chicago, Illinois,
Attorneys for Mercantile National Bank of Chicago and Benjamin H. Rubenzik, Trustees under the Indenture of Trust of the Bedford Belt Railway Company dated June 1, 1898.

Hunt, Hill & Betts,
Hunt, Hill & Betts,
120 Broadway
New York, New York.

Bell, Boyd & Marshall,
Bell, Boyd & Marshall,
135 N. La Salle Street,
Chicago, Illinois,
Attorneys for Chicago, Terre Haute and Southeastern Railway Company First Lien Bondholders Committee.

130 Barnes, Myers & Price,
Barnes, Myers & Price,
1601 Morris Building,
Philadelphia, Pennsylvania.

Bell, Boyd & Marshall,
Bell, Boyd & Marshall,
135 South La Salle Street,
Chicago, Illinois,
Attorneys for Girard Trust Company, Substituted Trustee under Deed of Trust dated February 1, 1901, of the Southern Indiana Railway Company, and Trustee under Supplemental Mortgage dated November 30, 1910, of Chicago, Terre Haute and Southeastern Railway Company.

E. S. Ballard,
E. S. Ballard,
Minier Sargent,
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Chicago, Illinois,
Attorneys for Continental Illinois National Bank and Trust Company of Chicago, as Trustee under Trust Indenture dated December 1, 1910, between Chicago, Terre Haute and Southeastern Railway Company and Illinois Trust and Savings Bank and William H. Henkle, Trustees.

Chicago, Illinois,
December 13, 1940.

157. And on, to wit, the 13th day of December, A. D. 1940 came the Terre Haute & Southeastern Group by Their attorneys and filed in the Clerk's office of said Court Their certain Statement of Points & Designation of Contents of Record in words and figures following, to wit:

Filed Dec. 13, 1940. 158 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

NOTICE.

To: Wilson & McIlvaine, 120 West Adams Street, Chicago, Illinois.
Winston, Strawn & Shaw, 1400 First National Bank Building, Chicago, Illinois.
Tenney, Harding, Sherman & Rogers, 120 South La Salle Street, Chicago, Illinois.
Sabath, Perlman, Goodman & Rein, 10 South La Salle Street, Chicago, Illinois.
Montgomery, Hart, Pritchard & Herriott, 120 South La Salle St., Chicago, Illinois.
McDonald & Richmond, 7 South Dearborn Street, Chicago, Illinois.
Sidley, McPherson, Austin & Burgess, 11 South La Salle Street, Chicago, Illinois.
D'Ancona, Pflaum & Kohlsaat, 33 North La Salle Street, Chicago, Illinois.
Shulman, Shulman & Abrams, 134 North La Salle St., Chicago, Ill.
Poppenhusen, Johnston, Thompson & Raymond, 11 S. La Salle St., Chicago, Illinois.
Charles W. Paltzer, 111 West Washington St., Chicago, Illinois.
Malcolm Mecartney, 1 North La Salle Street, Chicago, Illinois.
Lee Walker, 164 West Jackson Boulevard, Chicago, Illinois.
Nicholson, Snyder, Chadwell & Fagerburg, 135 S. La Salle Street, Chicago, Illinois.
Jesse I2 Cook, 33 North La Salle Street, Chicago, Illinois.
John A. Sheean, 208 South La Salle Street, Chicago, Illinois.
S. C. Murray, General Counsel, New York Central Railroad Co., 536 La Salle Street Station, Chicago, Illinois.
159 Scott, MacLeish & Falk, 134 South La Salle St., Chicago, Ill.

Theodore Schmidt and M. J. Haberkorn, Attorneys for Pennsylvania Railroad Company, 652 Union Station, Chicago, Illinois.

A. N. Whitlock and C. S. Jefferson, 888 Union Station Bldg., Chicago, Illinois.

Guggenheimer & Untermyer, 30 Pine Street, New York, N. Y.

Frederick J. Moses, 70 Pine Street, New York, N. Y.

Jack E. Bagon, 475 Fifth Avenue, New York, N. Y.

Shearman & Sterling, 55 Wall Street, New York, N. Y.

A. L. Skolnik, 1147 Empire Bldg., 710 N. Plankinton Avenue, Milwaukee, Wisconsin.

Mitchell, Taylor, Capron & Marsh, 20 Exchange Place, New York, N. Y.

F. C. Nicodemus, Jr., c/o Pierce & Greer, 40 Wall Street, New York, N. Y.

Hodges, Reavis, Pantaleoni & Downey, 20 Pine St., New York, N. Y.

Oliver & Donaldy, 110 East 42nd Street, New York, N. Y.

R. H. McRoberts, c/o Bryan, Williams, Cave & McPheeters, 314 North Broadway, St. Louis, Missouri.

Julius Weiss, 122 East 42nd Street, New York, N. Y.

Davis, Polk, Wardwell, Gardiner & Reed, 15 Broad St., New York, N. Y.

C. M. Clay, Assistant General Counsel, Reconstruction Finance Corporation, Washington, D. C.

Wright, Gordon, Zachry & Parlin, 63 Wall St., New York, N. Y.

Stewart & Shearer, 45 Wall Street, New York, N. Y.

Victor Grieff, 173 East 139th Street, Belle Harbor, Long Island, N. Y.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Attention T. W. Burtness, Secretary, Union Station, Chicago, Illinois.

Samuel W. McIntosh, National Press Bldg. Washington, D. C.

Lawrence Richardson, c/o Mitchell, Taylor, Capron & Marsh, 20 Exchange Place, New York, N. Y.

Carter, Ledyard & Milburn, 2 Wall Street, New York, N. Y.

Carmody, Roth and Mayer, 67 Broad Street, New York, N. Y.

160 Union Labor Life Insurance Company, Mr. Matthew Woll, President, 570 Lexington Avenue, New York, N. Y.

American Trust Company, Trustee under First Consolidated Mortgage of Bellingham Bay & British Columbia Railroad Company, 464 California St., San Francisco, California.

M'Cready Sykes, representing United States Trust Co. of New York, 45 Wall Street, New York, N. Y.

Edwin S. S. Sunderland and Thomas O'G. Fitz Gibbon, representing Guaranty Trust Co. and Mr. Merrel P. Callaway, Trustees, c/o Davis, Polk, Wardwell, Gardiner & Reed, 15 Broad Street, New York N. Y.

Thomas F. Murphy, representing Imperial Trust Co. of New Providence, Bahamas, 41 Broad Street, New York, N. Y.

C. W. Crispell, 986 East Avenue, Bay Head, New Jersey.

Leon M. Reiter, c/o Trustees of the Estate of Rachel P. Hyman, 314 West 77th Street, New York, N. Y.

Jeanette Bierhoff, 200 West 70th Street, New York, N. Y.

Mrs. Catherina Cornille, 4552 1st Avenue North, St. Petersburg, Florida.

You Are Hereby Notified that we have this day filed with the Clerk of the above Court a Statement of Points on Appeal, from the order approving a plan of reorganization for the Debtor, and a Designation of the Record on Appeal, copies of which are herewith served upon you.

Dated at Chicago, Illinois, this 13th day of December, 1940.

West & Eckhart,
William A. McSwain,
38 South Dearborn Street,
Chicago, Illinois,
Attorneys for Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bondholders' Committee.

161

Gann, Secord, Stead & McIntosh,
135 South La Salle Street,
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Attorneys for Mercantile National Bank of Chicago and Benjamin H. Rubenzik, Trustees under the Indenture of Trust of the Bedford Belt Railway Company dated June 1, 1898.

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Attorneys for Girard Trust Company, Substituted Trustee under Deed of Trust dated February 1, 1901, of the Southern Indiana Railway Company, and Trustee under Supplemental Mortgage dated November 30, 1910, of Chicago, Terre Haute and Southeastern Railway Company.

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Attorney for Chicago, Terre Haute and Southeastern Railway Company.

162 Cassels, Potter & Bentley,
209 South La Salle Street,
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Attorneys for The First National Bank of Chicago as Trustee under an Indenture dated December 1, 1910, between Chicago, Terre Haute and Southeastern Railway Company and First Trust and Savings Bank and Louis Boisot, Trustees.

Mayer, Meyer, Austrian & Platt,
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Chicago, Illinois,
Attorneys for Continental Illinois National Bank and Trust Company of Chicago, as Trustee under Trust Indenture dated December 1, 1910, between Chicago, Terre Haute and Southeastern Railway Company and Illinois Trust and Savings Bank and William H. Henkle, Trustees.

163 **Affidavit of Service.**

State of Illinois } ss.
County of Cook }

Henry M. Thullen, being first duly sworn, deposes and says that on December 13, 1940, he served the above and foregoing notice upon all of the parties named therein by mailing, postage prepaid, a copy of the same, together with copies of the documents therein described, to each such party at his address as shown above.

Henry M. Thullen.

Subscribed and sworn to before me this 13th day of December, A. D. 1940.

Frances C. Robertson,
(Seal) *Notary Public.*

My commission expires April 18, 1942.

164 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Dec. 13, 1940.
(Caption—60463)

STATEMENT OF POINTS ON APPEAL FROM ORDER APPROVING PLAN OF REORGANIZATION.

Now come

Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bondholders' Committee,

Mercantile National Bank of Chicago and Benjamin H. Rubenzik, Trustees under the Indenture of Trust of the Bedford Belt Railway Company dated June 1, 1898,

Chicago, Terre Haute and Southeastern Railway Company First Lien Bondholders Committee,

Girard Trust Company, Substituted Trustee under Deed of Trust dated February 1, 1901, of the Southern Indiana Railway Company and Trustee under Supplemental Mortgage dated November 30, 1910, of Chicago, Terre Haute and Southeastern Railway Company,

Massachusetts Mutual Life Insurance Company and The Prudential Insurance Company of America,

Chicago, Terre Haute and Southeastern Railway Company,

The First National Bank of Chicago as Trustee under an Indenture dated December 1, 1910, between Chicago, Terre Haute and Southeastern Railway Company and First Trust and Savings Bank and Louis Boisot, Trustees, and

165 Continental Illinois National Bank and Trust Company of Chicago, as Trustee under Trust Indenture dated December 1, 1910, between Chicago, Terre Haute and Southeastern Railway Company and Illinois Trust and Savings Bank and William H. Henkle, Trustees,

and pursuant to Rule 75 (d) of the Rules of Civil Procedure for the District Courts of the United States, and Rule 9 of the Rules of the United States Circuit Court of Appeals for the Seventh Circuit, jointly and severally file their Statement of Points on appeal from the order, judgment and decree of this Court made and entered herein on November 13, 1940, approving a plan of reorganization for the Debtor herein. Said points are as follows:

1. The Court erred in entering said order, judgment and decree in so far as it affects the rights of these appellants.

2. The Court erred in approving said plan of reorganization in so far as said plan affects the rights of these appellants.

3. The Court erred in approving said plan of reorganization in that said plan provides in part as follows:

"A. The effective date of the plan shall be January 1, 1939, provided, however, that the modification of the mortgages and the bonds of the Chicago, Terre Haute and Southeastern Railway Company, hereinafter referred to as the Terre Haute, and its subsidiaries, and the new lease of the Terre Haute property as hereinafter provided, shall be approximately as of the date of consummation of the plan."

166 "C. The capitalization of the new company at the consummation of the plan shall consist substantially of the equipment obligations outstanding, aggregating $33,322,999 on the basis described in the aforesaid report, and a bank loan of $1,184,000, both subject to final adjustment, $58,923,171 of first mortgage series-A and new money bonds, $57,267,669 of general mortgage 4½ percent bonds, series A, $51,422,111 of general mortgage 4½ percent convertible bonds, series B, $111,347,846 par value, of 5 per-

cent preferred stock, and 2,131,475¼ shares of common stock, of no par value. In addition, there shall remain outstanding, in modified form as hereinafter provided, $21,929,000, principal amount, of bonds of the Terre Haute and its subsidiaries."

* * * * *

"E. The new first mortgage shall constitute a first lien, subject only to the lien of equipment obligations, on all property owned by the debtor or its trustees in bankruptcy as such, including securities, equipment, and the equity in such equipment as may be subject to equipment-trust obligations, but excluding equipment or the equity in equipment which may be now or hereafter lodged under the lien of any of the Terre Haute mortgages in accordance with the terms of such mortgages, modified as herein provided. * * *"

* * * * *

"G. The mortgage indentures securing the first mortgage bonds of the Southern Indiana Railway Company, the first mortgage bonds of the Bedford Belt Railway Company, the first and refunding mortgage bonds of the Terre Haute, and the income mortgage bonds of the Terre Haute shall be modified by supplemental indentures and the existing bonds correspondingly modified, without disturbing their liens, or new bonds issued in exchange for the existing bonds, in either case effective approximately as of the date of consummation of the plan, so that (1) the maturity of all such bonds shall be the date of maturity of the first mortgage series-A bonds of the new company, (2) all such bonds shall bear fixed interest at the rate of 2.75 percent per annum and contingent in addition at the rate of 1.5 percent per annum, the payment of the latter being contingent upon the earnings of the new company to the same extent, in the same manner and with the same limitations, as is provided for the payment of interest on the general mortgage series-A income bonds of the new company, as hereinafter described, (3) the holders of the aforesaid bonds shall waive all equipment vacancies under the existing mortgages up to the effective date of the plan, January 1, 1939,
(4) the new company may, in the replacement of equip-
167 ment retired after the effective date of the plan, include equipment purchased under equipment trusts, the lien of the trusts not to exceed 75 percent of the total cost of the equipment, and (5) the mortgages contain appropriate

provisions permitting, subject to the approval of this Commission, abandonment of Terre Haute property which the board of directors may deem it to the interests of the system to abandon. The supplemental indenture for the Terre Haute income mortgage shall declare null and void the guaranty of the Chicago, Milwaukee and St. Paul Railway Company endorsed on the income bonds. A new lease shall be made between the Terre Haute and the new company which shall replace the present lease between the Terre Haute and the debtor. The new lease shall provide for the assumption by the new company of the payment of the principal amounts of the mortgage bonds, modified as above provided, and for the payment by the new company of the interest on the modified bonds at the rates and under the conditions specified in the modified bonds, in addition to an amount, not exceeding $12,000 a year, to pay the taxes and corporate expenses of the Terre Haute. The lease shall permit, subject to the approval of this Commission, the abandonment of property which the board of directors may deem to the advantage of the system to abandon, and shall contain such provisions as may be deemed appropriate to facilitate a consolidation of the properties of the Terre Haute with those of the new company.

"The foregoing provisions of the plan, if accepted by substantially all the Terre Haute bondholders, shall become effective approximately as of the consummation of the plan. The reorganization committee (hereinafter provided for), upon confirmation of the plan by the court, shall submit the foregoing provisions, with copies of this report and order, to all the Terre Haute bondholders, and shall report to the court the result of such submission. Should the court determine that the foregoing provisions relative to the treatment of the Terre Haute bonds and the Terre Haute lease shall not have been accepted by substantially all the Terre Haute bondholders, then the existing lease between the Terre Haute and the debtor, together with the guaranty of the payment of the principal and interest of the Terre Haute income mortgage bonds, shall be rejected, in so far as the plan herein approved is concerned, as of the date of such determination by the court, without prejudice to either the negotiations of a new lease or a consolidation of the properties of the Terre Haute with those of the new company, on terms subject to the approval of this Commission. In the event the court determines that the described provi-

sions have not been so accepted, appropriate adjustment shall be made by the court in the corporate structure of the new company, approved herein, by elimination of the assumption of obligation with respect to the Terre Haute bonds, and such other adjustments as the court may deem necessary to put the plan into effect."

168 H. . . .

"(4) Any then remaining available net income shall be applied to the payment on April 1 of each year, commencing 1940, of the contingent interest on the new company's general-mortgage income bonds of series A, and any accumulation thereof, together with the contingent interest on the four issues of Terre Haute Bonds, (which shall rank with the general-mortgage series-A bonds of the new company), up to the limiting rate of 1.5 percent per annum fixed in the supplemental indentures, and any accumulation thereof; all such contingent interest payments being in multiples of ¼ of 1 percent. In periods when the available net income is not sufficient to enable the new company to pay the full rate on the series-A bonds the ratio of the rate actually paid to the rate of 4½ percent shall be applied to the 1.5-percent rate on the new Terre Haute bonds in determining the amount of the contingent interest payment on the latter bonds, so that the Terre Haute bondholders of each class shall receive the same proportion of the contingent interest payment due on their bonds as will the debtor's creditors who receive the general-mortgage series-A bonds."

. . . . . .

"L. The treatment of claims and the provision for cash financing under the plan shall be as follows:

. . . . . .

"(3) The terms and conditions of the four classes of Terre Haute bonds shall be modified and a new lease of the Terre Haute properties shall be executed upon the agreement by substantially all the Terre Haute bondholders to accept the provisions of the plan affecting their interests, all in the manner and under the conditions described above under G."

. . . . . .

"M. . . .

"The new company shall be deemed to have assumed the obligations under existing executory contracts (except the present lease of the Terre Haute and the guaranty of the

Terre Haute income mortgage bonds), which by their terms do not terminate at or prior to the conclusion of the reorganization proceedings and which shall have been affirmed by the bankruptcy trustees prior to confirmation of the plan, and the new company shall also assume any executory contracts made by the trustees, with the approval or authorization of the court, which by their terms do not terminate at or prior to the conclusion of the reorganization proceeding.

169 4. The Court erred in overruling and in failing to sustain each and every one of the objections to said plan of reorganization set forth in Appendix A hereto, which is hereby made a part hereof, which said objections were filed with the Court on the respective dates and by the respective parties to this appeal set forth in said Appendix A.

5. The Court erred in failing to grant each and every one of the claims for equitable treatment set forth in Appendix B hereto, which is hereby made a part hereof, which said claims for equitable treatment were filed with the Court on the respective dates and by the respective parties to this appeal set forth in said Appendix B.

6. The Court erred in approving that portion of said plan of reorganization which provides for the rejection of the lease, dated July 1, 1921, of the property of the Chicago, Terre Haute and Southeastern Railway Company to Chicago, Milwaukee & St. Paul Railway Company, which lease was assumed and adopted by Chicago, Milwaukee, St. Paul and Pacific Railroad Company in 1928.

7. The Court erred in approving that portion of said plan of reorganization which provides for the rejection of the aforesaid lease, in that

(a) there is no evidence of record to show that said lease is burdensome to the Debtor or the Debtor's estate, or will be burdensome to the reorganized company, and neither the Interstate Commerce Commission nor the Court has found as a fact that said lease is burdensome to the Debtor or the Debtor's estate, or would be burdensome to the reorganized company,

(b) such rejection is inconsistent with the evidence of record herein which shows that said lease is highly profitable to the Debtor and the Debtor's estate, and would be profitable to the reorganized company,

(c) Such rejection is inconsistent with the evidence of record herein which shows that rejection of said lease would be detrimental to the best interests of the Debtor, the Debtor's estate and the reorganized company, and would jeopardize the carrying out of the reorganization plan and the financial welfare of the reorganized company.

8. The Court erred in approving said plan of reorganization in that said plan fails to provide either for the replacement of property (including equipment), leased under the aforesaid lease, which has been destroyed, transferred, retired, or otherwise disposed of, and not replaced, since the date on which the Debtor herein filed its petition seeking reorganization under section 77 of the Bankruptcy Act of 1898, as amended, or, in the alternative, for the payment to the lessor, Chicago, Terre Haute and Southeastern Railway Company, of an amount equal to the cost of such replacement, and in that said plan fails to provide for the payment to said lessor of an amount equal to the depreciation accrued on the leased property since that date.

9. The Court erred in approving said plan of reorganization, in that said plan fails to provide for the payment of the bonds of the Bedford Belt Railway Company, which matured on July 1, 1938, as provided for in the aforesaid lease.

10. The Court erred in approving that portion of said plan of reorganization which provides that the aforesaid lease shall be rejected as of the date, subsequent to confirmation of said plan by the Court, on which the Court determines that the provisions of said plan relating to the treatment of said lease and of the bonds of Chi-
171 cago, Terre Haute and Southeastern Railway Company have not been accepted by substantially all of the holders of said bonds of Chicago, Terre Haute and Southeastern Railway Company, which provision of said plan reads as follows:

"Should the court determine that the foregoing provisions relative to the treatment of the Terre Haute bonds and the Terre Haute lease shall not have been accepted by substantially all the Terre Haute bondholders, then the existing lease between the Terre Haute and the debtor, together with the guaranty of the payment of the principal and interest of the Terre Haute income mortgage bonds, shall be rejected, in so far as the plan herein approved is

concerned, as of the date of such determination by the court, without prejudice to either the negotiation of a new lease or a consolidation of the properties of the Terre Haute with those of the new company, on terms subject to the approval of this Commission."

in that if said lease is rejected it should be rejected as of the date on which Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, filed its petition seeking reorganization under section 77 of the Bankruptcy Act of 1898, as amended.

11. The Court erred in approving that portion of said plan of reorganization, set forth in paragraph 10 above, which provides that the aforesaid lease shall be rejected as of the date, subsequent to confirmation of said plan of reorganization by the Court, described in paragraph 10 above, in that said provision requires, contrary to law, that the extent of the damage or injury to said Chicago, Terre Haute and Southeastern Railway Company, as lessor, caused by such rejection, and to the holders of the bonds of said lessor, be determined as of the date above referred to and not as of the date on which Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, filed its petition seeking reorganization under section 77 of the Bankruptcy Act of 1898, as amended.

12. The Court erred in approving that portion of said plan of reorganization, set forth in paragraph 10 above, which provides that the aforesaid lease shall be rejected as of the date, subsequent to confirmation of said plan by the Court, described in paragraph 10 above, in that if said lease is rejected it is required as a matter of law

(a) that the operation of the leased properties by the Debtor's trustees during the pendency of this reorganization be for the account and benefit of the lessor, Chicago, Terre Haute and Southeastern Railway Company, and of the holders of the bonds of said lessor, and not for the account and benefit of the Debtor's estate; and

(b) that the Debtor's trustees account for and pay over to said lessor, Chicago, Terre Haute and Southeastern Railway Company, the profits and earnings derived from the properties of said lessor subsequent to the date on which the Debtor herein filed its petition seeking reorganization under section 77 of the Bankruptcy Act of 1898, as amended.

13. The Court erred in adding at the end of the last paragraph of subdivision M of the plan of reorganization as certified by the Interstate Commerce Commission the following:

"Claims, arising from the disaffirmance of executory leases or contracts of the Debtor, shall constitute general unsecured claims against the Debtor, and shall be satisfied in the same manner as other general unsecured claims by the allocation of common stock in the manner provided in the plan."

14. The Court erred in referring said plan of reorganization back to the Interstate Commerce Commission for the purpose of submitting said plan to creditors of the
173 Debtor for acceptance or rejection without making provision for the prior filing and allowance of claims for damages resulting from the rejection of the aforesaid lease, thereby denying to the lessor, Chicago, Terre Haute and Southeastern Railway Company, and to all other persons injured by such rejection, the right to vote upon the acceptance or rejection of said plan of reorganization.

15. The Court erred in finding as a fact that said plan of reorganization complies in all respects with all of the provisions and requirements of subdivision (b) of section 77, in that said plan fails to comply with such provisions and requirements in so far as it affects the rights of these appellants.

16. The Court erred in concluding as a matter of law that said plan of reorganization conforms in all respects to the requirements of section 77, in that said plan fails to conform to such requirements in so far as it affects the rights of these appellants.

Dated December 13, 1940.

West & Eckhart,
West & Eckhart,

William A. McSwain,
William A. McSwain,
38 South Dearborn Street,
Chicago, Illinois,
Attorneys for Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bondholders' Committee.

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175 Mayer, Meyer, Austrian & Platt,
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231 South La Salle Street,
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Attorneys for Continental Illinois National Bank and Trust Company of Chicago, as Trustee under Trust Indenture dated December 1, 1910, between Chicago, Terre Haute and Southeastern Railway Company and Illinois Trust and Savings Bank and William H. Henkle, Trustees.

Chicago, Illinois,
December 13, 1940.

176 APPENDIX A.

Objections to the Plan of Reorganization Certified by the Interstate Commerce Commission to This Court.

Amended Objections of Terre Haute Income Mortgage Bondholders' Committee, filed November 6, 1940.

1. There is no justification in law or in fact for either the modification of the Terre Haute Bonds or the rejection of the Terre Haute Lease.

2. The Plan provides that the Terre Haute Lease shall be rejected after confirmation if the Court determines that substantially all of the Terre Haute bondholders have not accepted the modifications offered by the Plan.

3. In the event substantially all of the Terre Haute bondholders do not accept the proffered modifications, the Terre Haute Lease shall be rejected as of the "date of determination" by the Court of such fact.

4. The Plan makes no provision for an accounting to the Terre Haute by the Trustees in the event of rejection of the Lease. Provision should be made for such an accounting for the earnings from the operation of the properties during the period from the filing of the petition to the date of rejection.

Joint and Several Objections of Massachusetts Mutual Life Insurance Company and The Prudential Insurance Company of America, filed August 1, 1940.

1. These objectors object to said plan because of its failure to provide that the reorganized company shall assume and adopt the lease of the properties of Chicago, Terre Haute and Southeastern Railway Company 177 (hereinafter called "the Terre Haute"), made between the Terre Haute, as lessor, and the debtor's predecessor, the Chicago, Milwaukee and St. Paul Railway Company, as lessee, dated July 1, 1921, which lease was assumed and adopted by the debtor.

2. These objectors object to said plan because of its failure to provide either for the adoption or rejection of said lease prior to the submission of said plan to the debtor's creditors for acceptance or rejection.

3. These objectors object to the provisions of said plan contained in paragraph G thereof, for rejection of said

lease subsequent to confirmation of said plan upon the contingency set forth in said paragraph G.

4. These objectors object to said plan because of its failure to provide that the reorganized company shall assume the guaranty by the debtor of the payment of the principal and interest of the Terre Haute Income Mortgage 5% Bonds.

5. These objectors object to the provision of said plan, contained in paragraph G thereof, that upon the contingency set forth in said paragraph G the aforesaid guaranty shall be rejected.

6. These objectors object to the provision contained in paragraph G of said plan to the effect that in the event rejection of the aforesaid lease and guaranty occurs, such rejection shall be as of the date of determination by the Court (subsequent to confirmation of the plan) that the provisions of said plan relative to the treatment of the Terre Haute bonds and the aforesaid lease have not been accepted by substantially all the holders of the Terre Haute bonds.

178 7. These objectors object to the provision of said plan, contained in paragraph M thereof, that the reorganized company "shall be deemed to have assumed the obligations under existing executory contracts (except the present lease of the Terre Haute and the guaranty of the Terre Haute income-mortgage bonds), which by their terms do not terminate at or prior to the conclusion of the reorganization proceedings and which shall have been affirmed by the bankruptcy trustees prior to confirmation of the plan."

8. These objectors object to said plan because of its failure to make any provision for the payment, in the event of rejection of the aforesaid lease, to the Terre Haute of all profits derived by the debtor's trustees or the debtor's estate in the operation of the properties of the Terre Haute since the date of the filing of the debtor's petition for reorganization herein.

9. These objectors object to said plan for the reason that in determining its provisions the Commission has failed to consider or to make any findings with respect to the effect upon the financial ability of the reorganized company to put into effect and carry out the provisions of said plan in the event that payment to the Terre Haute of all profits derived by the debtor's trustees or the debtor's estate during the course of the proceedings from the oper

ation of the Terre Haute properties shall become necessary by reason of rejection of the aforesaid lease.

10. These objectors object to said plan for the reason that in determining its provisions the Commission has failed to consider or to make any findings with respect to the effect on the financial ability of the reorganized company to put into effect and carry out the provisions of said plan in the event that the debtor's estate and the reorganized company are deprived of all future profits and revenues from the operation of the Terre Haute properties by reason of rejection of the aforesaid lease.

11. These objectors object to said plan for the reason that the ability of the reorganized company to put into effect and carry out said plan will be substantially impaired in the event of rejection of the aforesaid lease as provided in said plan, by reason of the resulting loss to the debtor's estate and to the reorganized company of all future profits and revenues from the operation of the Terre Haute properties, and by reason of the resulting loss to the debtor's estate and to the reorganized company of the cash which will be required to be paid to the Terre Haute on account of the profits derived by the debtor's trustees or the debtor's estate during the course of the proceedings from the operation of the Terre Haute properties.

12. These objectors object to each and all of the provisions of said plan, contained in paragraph G thereof, relating to the modification of the Terre Haute bonds and of the mortgage indentures securing the same, the execution of a new lease between the Terre Haute and the reorganized company, the submission of said provisions to the Terre Haute bondholders for acceptance after confirmation of the plan by the Court, and the rejection of the existing lease between the Terre Haute and the debtor and of the guaranty of payment of principal and interest of the Terre Haute income mortgage bonds in the event of non-acceptance by said bondholders.

13. These objectors object to each and all of the provisions of said plan, contained in subparagraph (3) of paragraph I, thereof, relating to the modification of the Terre Haute bonds and the execution of a new lease of the Terre Haute properties in the event that substantially all the Terre Haute bondholders agree to accept the provisions of the plan affecting their interests.

Objections of Chicago, Terre Haute and Southeastern Railway Company, filed August 1, 1940.

The Modified Plan of Reorganization Is Not Fair and Equitable to the Terre Haute, and Does not Afford Due Recognition of Its Rights Created by and Existing Under the Lease dated July 1, 1921, in the Following Respects:

1. Said plan requires a new lease to be made between the Terre Haute and the new company under the terms of which the present lease rental will be reduced by means of

(a) reducing the respective interest rates now borne by the First Mortgage bonds of the Bedford Belt Railway Company and by the First and Refunding bonds and the Income bonds of the Terre Haute; and

(b) separating the modified interest to be thus paid upon said bonds and the First Mortgage bonds of the Southern Indiana Railway Co., into two kinds, the payment of one of which is contingent upon earnings of the new company; and

(c) making such contingent interest dependent upon the available net income of the entire system of the new company instead of upon the net earnings and savings of the new company derived from the leased line of the Terre Haute.

Such requirements are inequitable and unfair in view of the fact that the earnings and savings to the Lessee from its operations of the leased line have been far in excess of rental expense, and there is no evidence that such will not continue to be the case. In short, such requirements are intended to help out Milwaukee bondholders at the expense of Terre Haute bondholders. The former have no rights, and the latter have no duty, in that behalf.

2. Said plan requires the holders of bonds issued by the Terre Haute, or constituting a lien on its property, to waive all equipment vacancies existing prior to January 1, 1939, instead of prior to June 29, 1935, the date of the filing of the debtor's petition herein. Replacement of equipment retired since June 29, 1935, represents an administration expense of the Trustees in respect of which the Commission has no jurisdiction, such jurisdiction being exclusive with this Court under the provisions of Section 77, sub-section (e)(3).

3. Said plan requires that the new lease shall contain

such provisions as may be deemed appropriate to facilitate a consolidation of the properties of the Terre Haute with those of the new company. Operation by the new company of the Terre Haute properties under a lease arrangement is advantageous to the Terre Haute and its security holders without any financial, operating or other disadvantages or burden therefrom, as compared with consolidation, to the new company; whereas, a consolidation or other acquisition of title to the Terre Haute properties by the new company would deprive the Terre Haute and its security holders of the advantages inherent in retaining title.

4. Said plan requires the existing lease to be rejected by the new company in the event the Terre Haute bondholders do not accept all of the provisions of the plan relative to the treatment of the Terre Haute bonds and the lease. This alternative is inequitable and unfair in that

(a) the provisions of the plan herein objected to are unnecessary to the success of the modified plan of reorganization with those provisions omitted. The rejection of the existing lease will increase—and not decrease, as the Commission's supplemental report says—the difficulties of effecting a reorganization along the line of the capital structure shown in the approved plan. Rejection of the present lease will cause the new company to lose the net earnings and savings which it would otherwise derive from the operation of the leased property, and thus diminish, pro tanto, its income available for fixed charges.

(b) it constitutes (whether or not so intended) a threat and species of duress to which the Terre Haute bondholders should not be subjected. That such is the real nature of the rejection alternative, is shown by the fact that the present lease is a self-supporting asset of the debtor's estate, and that the rejection is proposed, not for the purpose of cutting off or reducing a loss (for there is none) but for the purpose of securing increased profits. The bonds are widely scattered and held for the most part in relatively small amounts, so that the individual bondholder has, in reality, small choice. The Terre Haute Company has no operating organization or adequate working capital after being out of active business for 19 years; this situation has an adverse effect upon any free choice by the Terre Haute bondholders between the alternatives presented, and constitutes another reason why this Court should refuse to put any bondholder in the position of having to make a choice.

5. The modified plan does not conform to the requirements of Section 77 of the Bankruptcy Act in the following respects:

(a) In the event the lease be rejected as provided in said plan (supplemental order, pages 18-21) such rejection will, by established legal principles, relate back to the inception of the proceeding, i. e., June 29, 1935. The plan makes no provision for such relation back, but on the contrary provides that the rejection of the lease shall be "as of the date of such determination by the Court" (supplemental order, page 21). Neither the Commission nor the Court has power to make the rejection effective as of such date of determination.

(b) In the event of such rejection of the lease as provided in said plan, the Terre Haute will become entitled to receive all of the revenues and income derived from the operation of the leased properties by the Trustees, less expenses of such operation. The plan does not make any provision for such payment.

183 Objections of The First National Bank of Chicago, as Trustee under an Indenture dated December 1, 1910, Securing Chicago, Terre Haute and Southeastern Railway Company's Income Mortgage Fifty-Year Gold Bonds, filed A[illegible]ust 1, 1940.

1. The existing lease is for the mutual benefit of the Debtor and the Terre Haute, and rejection thereof is not in the interest of either, in that among other things:

(a) The Debtor has received substantial profits from the operation under said lease ever since the inception of the lease; and

(b) The security holders of the Terre Haute have been satisfied up to this time with the rental provisions of said lease and rejection of the lease will impose upon the Terre Haute the obligation of resuming operation of the road for which it is at this time entirely unprepared.

2. [illegible] considers that in so far as it is its duty to make any recommendation with respect thereto, it should not recommend a modification of said lease to provide a lesser annual rental than is now provided in the existing lease.

3. The modified plan and report accompanying it do not disclose the effects upon the new company arising from rejection of the lease under the modified plan of reorgani-

zation, nor provide how the obligations imposed upon Trustees of the Debtor, arising upon rejection, are to be treated. Trustee, believing that the court, in considering the modified plan of reorganization, should be advised of its position with respect to rejection of the leasehold, to that end suggests for the court's consideration the following:

(a) It is the position of Trustee that upon rejection of the lease the Trustees of the Debtor must pay to the Terre Haute all profits which have accrued from the operation of the leased property since the beginning of these proceedings, and that a proper plan should make provision therefor;

184 (b) It is the position of the Trustee that upon rejection of the lease the Trustees of the Debtor must make proper adjustment for all equipment vacancies occurring since the beginning of these proceedings, and that a proper plan should make provision therefor.

4. Trustee submits for the consideration of the court the following suggestions with respect to the effect of rejection of the lease upon the new company under the proposed modified plan of reorganization:

(a) The modified plan proposes that, lacking acceptance by substantially all of the Terre Haute bondholders of the proposed rental changes, etc., the lease shall be rejected "as of the date of such determination by the court." Trustee takes the position that in this proceeding the court has no such power, its power being confined to rejecting the lease which, under the law, is effective as of the date the proceedings were initiated;

(b) The amount of profit made upon the operation of the Terre Haute properties under the existing leasehold has in the past been more than sufficient to pay not less than two-fifths (2/5ths) of the fixed charges upon the proposed first mortgage bonds of the new company;

(c) The modified plan of reorganization for the purpose of eliminating $419,432 of fixed charges for interest upon the Terre Haute securities proposes to sacrifice more than a million dollars of net income arising from operation of the leased property so that after the rejection of the lease the modified plan does not assure sufficient net income to justify the fixed charges proposed in the modified plan;

(d) The modified plan is based upon the judgment of the Interstate Commerce Commission that the fixed charges should not exceed approximately $4,270,000, but in making

its determination of the amount of fixed charges which the new company might safely bear, the Commission included the profit from the Terre Haute lease. Assuming the basis upon which the Commission proceeded is sound, but eliminating the profit accruing from the Terre Haute lease, then the amount of fixed charges should be substantially reduced so that the modified plan, if true to the basis upon which it is predicated, should provide that in the event of rejection of the Terre Haute lease, the fixed charges upon all the securities of the new company should be reduced by the amount of income lost on account of rejection. Trus-
185 tee believes that upon the basis assumed by the Interstate Commerce Commission the modified plan upon rejection of the Terre Haute lease becomes unworkable.

5. Trustee respectfully suggests that the proposal in the modified plan of reorganization that, unless substantially all of the security holders of Terre Haute accede to the changes proposed by the Interstate Commerce Commission, the lease will be rejected is inequitable in that:

(a) Neither the plan nor the report adequately sets forth the treatment to be accorded the Terre Haute by the Trustees of the Debtor upon rejection of the lease so that Terre Haute security holders do not have sufficient information upon which to make a choice;

(b) The modified plan is silent upon how the plan is to be made effective even if substantially all the security holders of the Terre Haute accept the proposed changes;

(c) Since the report of the Interstate Commerce Commission shows that the existing leasehold has been profitable to the Debtor, and since it is known that the Terre Haute is not now prepared to resume operations of its railroad, the proposal takes on the appearance of an effort to coerce security holders of the Terre Haute into accepting a less favorable yearly rental in order to increase the net income of the new Company.

6. Trustee suggests that it is in the interests of Terre Haute security holders and the security holders of the Milwaukee that the yearly rental in the existing leasehold be not changed.

Objections of Continental Illinois National Bank and Trust Company of Chicago, as Trustee for Chicago, Terre Haute and Southeastern Railway Company First and Refunding Mortgage Bonds, filed August 7, 1940.

The Trust Indenture provides in Article V, Section 5, that:

"The Trustees shall at any time, take such steps as the corporate Trustee, in its discretion, shall deem advisable to protect their interest and the interests of the First 186 and Refunding Bondholders hereunder in respect of any bonds, obligations or stocks which may at the time be subject to the lien hereof."

The Plan proposed by the Interstate Commerce Commission for the approval of this Court, in the opinion of the Trustee and its counsel, gravely and unwarrantedly jeopardizes the interests of holders of Terre Haute First Mortgage bonds. Objections to the Plan and claims for equitable treatment have been filed by Terre Haute, Charles B. Roberts III, John E. Blunt, Lemuel A. McHenry and Roger H. Williams, as a Committee representing Terre Haute First Mortgage Bonds, Southern Indiana Railway Company First Mortgage Four Per Cent Bonds, and Bedford Belt First Mortgage Five Per Cent Bonds, and by The First National Bank of Chicago, as Trustee under an Indenture securing Terre Haute's Income Mortgage Fifty Year Gold Bonds in the principal amount of $6,500,000, of which bonds of the principal amount of $6,336,000 are now issued and outstanding in the hands of the public. The Trustee, in addition to the Objections and Claim for Equitable Treatment hereinafter set forth, joins in each and every objection and claim for equitable treatment urged by said Terre Haute, said Committee, and said The First National Bank of Chicago, as Trustee.

The Plan Is Not Fair and Equitable to the Holders of Terre Haute First Mortgage Bonds and Does not Afford Due Recognition of Their Rights Created by and Existing Under the Trust Indenture and the Lease (hereinafter called the "Lease") from Terre Haute to Chicago, Milwaukee and St. Paul Railway Company dated July 1, 1921.

1. More than five years has elapsed since trustees were appointed in this proceeding for reorganization of Chi-

cago, Milwaukee, St. Paul and Pacific Railway Com-
187 pany (hereinafter called the "Milwaukee"). There can be no question that ample time has been afforded the Milwaukee trustees to determine whether the affirmance of the Lease is or is not for the best interests of the trust estate and of any reorganized company operating the Milwaukee lines. It is apparently not disputed that, as found by the Interstate Commerce Commission, the Lease is a valuable asset of the Milwaukee. Therefore, the only purpose, whether intended or not, which can be served by postponement of affirmance of the Lease is to coerce holders of securities of Terre Haute (over whom the Court concededly has no jurisdiction in these proceedings), largely unorganized and unprepared for immediate operations of Terre Haute as an independent unit, to make a valuable lease even more valuable to the Milwaukee by a forced gratuity from themselves to the present holders of securities of the Milwaukee. Under such circumstances this Court to do equity to Terre Haute security holders should not countenance further delay in the affirmance of the lease by the Milwaukee trustees.

2. Moreover, such an affirmance is required in order to do equity to the holders of Milwaukee securities. It is admitted by the Interstate Commerce Commission, and apparently by all parties in interest, that over a period of years the income and savings to Milwaukee, under any system of accounting suggested, from operations under the Lease exceed by well over a million dollars per annum the cost to the Milwaukee trustees under the Lease, including all interest on securities at the present rate required to be paid by Milwaukee under the Lease. The Interstate
188 Commerce Commission, as the basis for reducing the fixed interest to be paid to Terre Haute security holders and those of affiliated lines by about $420,000, urges that it must do so to keep total fixed interest charges of the whole Milwaukee system at not to exceed $4,270,000 a year. Obviously, the Milwaukee system would be justified in increasing its fixed charges by $420,000 to increase its net revenue and savings by upwards of $1,000,000 per year. Equally obviously, if this revenue of more than $1,000,000 per annum is to be lost by rejection of the Terre Haute lease, fixed charges of the system should be reduced by this amount, thus necessitating reducing the amount of new first mortgage bonds of the reorganized Milwaukee by upwards of $25,000,000. Under such circumstances the re-

jection of the existing lease would increase and not decrease the difficulties of effecting a reorganization along the lines of the capital structure set forth in the Plan approved by the Interstate Commerce Commission.

3. If the Lease be rejected, such rejection must relate back to June 29, 1935, the date of the commencement of these proceedings. In such case the trustees of Milwaukee must account for and pay in cash, as an expense of administration, to Terre Haute all profits and savings realized through the operation of the Terre Haute over and above the rental actually paid. The Trustee is informed that such profits and savings over and above actual rental paid are well in excess of five millions of dollars. The trustees of Milwaukee must also account for and pay in cash, as an expense of administration, to Terre Haute reasonable rental for all equipment and rolling stock of Terre Haute removed from its lines and
189 used by the trustees from June 29, 1935, to date of replacement or payment for such equipment and rolling stock. Payment in cash as an expense of administration must, of course, also be made upon rejection of the Lease for all usable equipment and rolling stock taken from the Terre Haute lines which the Milwaukee trustees are unable to replace in kind or with other equipment equal in value satisfactory to Terre Haute as suitable for its operations. The Trustee is informed that such removed equipment has a value largely in excess of $2,000,000.

4. Upon rejection of the Lease and payment of upwards of $5,000,000 in cash by the Milwaukee trustees to Terre Haute for profits and savings over and above rental accrued to the Milwaukee trustees under the terms of the Lease since June 30, 1935, upon payment in cash by the Milwaukee trustees of reasonable rental for all equipment and rolling stock of Terre Haute used by them, and upon restoration to Terre Haute of suitable equipment and rolling stock or payment of its value in an amount upwards of $2,000,000, Terre Haute will be in a position to consider independent operation. In this connection, Victor V. Boatner, railway expert, in a report on the Terre Haute, dated September, 1938, prepared at the request of The First National Bank of Chicago, as Trustee of Terre Haute Income Bonds, makes this pertinent comment:

"Results of independent operation can only be estimated but sufficient evidence is available as to revenues, expenses and income, to permit a supported conclusion that such an

operation would prove successful. Were the Terre Haute deprived entirely of the Milwaukee fuel coal revenue and retained its other traffic and revenues, it would still be able to operate at a ratio of expense to revenue, based on 1937 levels, that would yield substantial income in excess of interest requirements. Even on the low traffic levels
190 that existed in 1933 and 1934 it is estimated income would be more than sufficient to meet the interest requirements."

The Court must, however, of course consider whether the Plan for Milwaukee will still be practicable after payment by the Milwaukee trustees to Terre Haute of upwards of five million dollars in cash, and after the loss to Milwaukee of net operating revenue presently enjoyed from Terre Haute and upwards of a million dollars. Such cash outlays and diminution of income can, it is respectfully submitted, be avoided and only be avoided by affirmance rather than rejection of the Lease.

5. Since the Lease is valuable to the Milwaukee estate, the value of the Terre Haute properties exceeds the face amount of both the First Mortgage and Income Bonds outstanding, its income largely exceeds the present interest charges on both, and it could in all probability, as stated by Boatner in the excerpt supra, conduct a profitable independent operation, there would seem to be no justification whatsoever for asking the Terre Haute First Mortgage Bonds or the Terre Haute Income Bonds to accept any reduction in interest rate as a condition to affirmance of the Lease by the Milwaukee trustees. But in no event can the holders of First Mortgage Bonds, which, as recognized by the Interstate Commerce Commission, have a paramount lien and prior claim to interest over the Terre Haute Income Bonds, properly be asked to reduce their interest rate, regardless of what may be requested of holders of junior securities.

191 Objections of Chicago, Terre Haute and Southeastern Railway Company First Lien Bondholders Committee, Filed August 1, 1940.

The modified plan of reorganization for the Milwaukee promulgated by the Interstate Commerce Commission pursuant to its report and order of June 4, 1940, is not fair and equitable to the Terre Haute first lien bondholders; does not afford due recognition to the rights of each class

of such bondholders; discriminates unfairly in favor of classes of creditors of the Milwaukee as against the Terre Haute bondholders and as among the Terre Haute bondholders; and does not conform to the requirements of the law of the land regarding the participation of the various classes of Terre Haute bondholders and of the creditors of the Milwaukee in the following respects:

1. Said Plan is not fair and equitable to the Terre Haute bondholders in that it requires

(a) the holders of the Terre Haute First and Refunding Mortgage 5% Bonds and of the Bedford Belt Railway Company 5% Bonds to consent to a reduction of their fixed interest from 5% to 2¾% to which is to be added another 1¼% of interest if the additional 1¼% be earned by the reorganized Milwaukee in addition to 4½% on the reorganized Milwaukee's proposed new General Mortgage Income 4½% Bonds, of which in excess of $57,000,000 principal amount are to be issued, in spite of the fact that the Terre Haute's earnings available for interest in 1936—designated by the Interstate Commerce Commission as a not unusually favorable period—amounted to $2,990,126,—nearly three times the Terre Haute's interest requirements of $1,023,580 on all its outstanding bonds, if coal hauled over the Terre Haute for the Milwaukee's own use be charged for at regular tariff rates; or, if charged for on a "cost of service" basis, $2,040,187,—nearly twice the Terre Haute's interest requirements on all its bonds outstanding in the hands of the public.

(b) the holders of the Southern Indiana Railway Company First Mortgage 4% Bonds to reduce their fixed interest from 4% to 2¾%, to which should be added an additional 1¼%, on the same terms as set forth in paragraph "(a)" above.

The unfairness of said Plan and its lack of equity as to the Terre Haute bondholders, is further disclosed by the facts, among others, that the mortgage district upon
192 which the Terre Haute First and Refunding 5's have a first lien produced earnings available for interest in 1938, not an unusually favorable period, of about 3.4 times the interest charges on the Terre Haute First and Refunding 5's, and the mortgage district upon which the Southern Indiana 4's, are secured produced in 1938 earnings available for interest about 2.4 times its interest charges.

2. The said Plan is not fair and equitable to the Terre Haute bondholders in that it requires them to consent to

a waiver of the claim of the Terre Haute against the Milwaukee for equipment vacancies under the terms of the Terre Haute mortgages and of the said lease estimated at about $5,000,000 as of June 30, 1935, and being about $7,106,149 as of December 31, 1937, in spite of the fact that the possession and operation of the Terre Haute by the Milwaukee during the years 1921 to 1937 was a source of profit to the Milwaukee to the extent of about $27,000,000, if the Terre Haute's haul of Milwaukee coal be charged for and computed on the basis of regular tariff rates.

3. The said Plan is not fair and equitable to the Terre Haute bondholders for the reason that if substantially all the Terre Haute bondholders do not consent to the Plan, including the provisions therein affecting the Terre Haute and its bondholders, the said lease is to be rejected.

4. The said Plan is not fair and equitable to the Terre Haute bondholders in that it requires the rejection of a lease, viz., the lease of the Terre Haute to the Milwaukee, which is not burdensome, but profitable, to the Milwaukee, in case substantially all the Terre Haute bondholders do not consent to the modifications of their bonds, mort- 193 gages, and of the said lease, enumerated in article "G" of the Order of the Interstate Commerce Commission in these proceedings dated June 4, 1940.

5. The said Plan is not fair and equitable to the Terre Haute bondholders in that it seeks to force, under penalty of rejection of the said lease the consent of the Terre Haute bondholders to modifications of their bonds, mortgages, and of the said lease in these proceedings in which neither the court nor the Commission has jurisdiction of the Terre Haute or its bondholders within the provisions of Section 77 of the Bankruptcy Act.

The alternative with which the Modified Plan confronts the Terre Haute bondholders constitutes (whether or not so intended) a threat and species of duress to which the Terre Haute bondholders should not be subjected.

6. The said Plan is not fair and equitable to the Terre Haute bondholders in that it seeks to force a consolidation of the profitable Terre Haute with the bankrupt Milwaukee in these proceedings in which neither the court nor the Commission has jurisdiction of the Terre Haute for the reason that no petition under Section 77 of the Bankruptcy Act has been filed by it or against it, nor is it in receivership in any state or federal court, nor has any proceeding been begun pursuant to the appropriate provisions of the

Interstate Commerce Act for the consolidation of the Terre Haute with the Milwaukee.

7. The said Plan does not afford due recognition to the rights of the Terre Haute bondholders for the reason that in addition to the facts hereinabove set forth as rendering the Plan unfair and inequitable, no provision is made in it for the satisfaction of the Terre Haute's
194 claim against the Debtor for the $5,000,000 more or less of equipment vacancies existing as of June 30, 1935, nor for the replacement by the Milwaukee trustees of the equipment vacancies which have accrued since June 30, 1935, to date of consummation of the Plan or for payment to the Terre Haute of the values thereof aggregating in excess of $2,000,000 more.

8. The Plan discriminates unfairly against the Terre Haute bondholders and in favor of the Milwaukee bondholders and creditors in that the Plan seeks to compel the Terre Haute bondholders to consent to what amounts to a reduction of rental under said lease with consequent reduction of interest on their bonds so as to enable the reorganized Milwaukee to pay more interest on the new bonds it is proposed shall be issued in exchange to Milwaukee bondholders and creditors for their claims, even though the said lease is profitable to the Milwaukee and the Terre Haute has not failed in the due performance of the terms and conditions therein provided to be performed on its part.

9. The said Plan discriminates unfairly

(a) against the holders of the Terre Haute First and Refunding 5's in that although the mortgage district securing the said bonds is earning about 3.4 times the interest requirements on said bonds, the holders of said bonds are asked to reduce their interest to 2¾% fixed and 1¼% contingent interest as above mentioned;

(b) against the Southern Indiana 4's in that although the mortgage district securing the said bonds is earning about 2.4 times the interest requirements on said bonds, the holders of said bonds are asked to consent to a reduction of their interest to 2¾% fixed plus 1¼% contingent.

The earnings of the several mortgage districts primarily securing the aforesaid two bond issues do not warrant—
195 even assuming the 1¼% additional interest to be earned and paid—a reduction of interest on the First and Refunding 5's and an increase of interest on the Southern Indiana 4's.

10. The said Plan does not conform to the requirements of the law of the land regarding the participation of the various classes of creditors of the Milwaukee, assuming but not admitting the Terre Haute bondholders to be such, in that the law of the land does not permit junior or general creditors of a bankrupt to participate in the earnings of property covered by a first mortgage until the holders of the first mortgage are satisfied in full for interest and principal, whereas said Plan would take earnings of the properties subject to the first mortgages securing the bonds which this Committee represents and pay them to junior or other creditors.

Objections of Girard Trust Company, Substituted Trustee Under Deed of Trust Dated February 1, 1901, of the Southern Indiana Railway Company, and Trustee under Supplemental Mortgage Dated November 30, 1910, of Chicago, Terre Haute and Southeastern Railway Company, filed August 1, 1940.

1. The Modified Plan of Reorganization for the debtor, promulgated by the Interstate Commerce Commission pursuant to its Report and Order of June 4, 1940, is not fair and equitable to the Southern Indiana bondholders, does not afford due recognition to the rights of said bondholders, designates unfairly in favor of classes of creditors of the Debtor as against the Southern Indiana bondholders, and does not conform to the requirements of law regarding the participation of the Southern Indiana bondholders and of the creditors of the Debtor in the following respects:

(a) It requires the holders of bonds of the Southern Indiana to consent to a reduction of their fixed interest from 4% to 2¾%, to which is to be added another 1¼% of interest if the additional 1¼% be earned by the reorganized Debtor in addition to 4½% on the reorganized
196 Debtor's proposed new General Mortgage Income 4½% Bonds, of which in excess of $57,000,000 principal amount are to be issued, in spite of the fact that the Terre Haute earnings, including those of the Southern Indiana, available for interest in 1936—designated by the Interstate Commerce Commission in its report as a not unusually favorable period—amounted to $2,990,126, or nearly three times the interest requirements of the Terre Haute (including those of Southern Indiana) amounting to $1,023,580, on all its outstanding bonds (including those of the

Southern Indiana), if coal hauled over the Terre Haute for the Debtor's own use be charged for at regular tariff rates, or, if charged for on a "cost of service" basis, $2,040,187, or nearly twice the interest requirements of the Terre Haute (including the Southern Indiana) on all its bonds outstanding in the hands of the public. The unfairness of the Plan, and its lack of equity as to the Southern Indiana bondholders, is further disclosed by the fact, among others, that the mortgage district upon which the Southern Indiana bonds are secured produced in 1938 earnings available for interest of about 2.4 times its interest charges.

(b) It requires them to consent to a waiver of the claim of the Tefre Haute against the Debtor for equipment vacancies under the terms of the Terre Haute mortgages (including the mortgage of the Southern Indiana), and of the said lease estimated at about $5,000,000. as of June 30, 1935, and being about $7,106,149. as of December 31, 1937, in spite of the fact that the possession and operation of the Terre Haute (including the Southern Indiana) by the Debtor and its predecessor during the years 1921 to 1937 was a source of profit to the Debtor and its predecessor to the extent of approximately $27,000,000., if the haul of the Debtor's coal by the Terre Haute (including the Southern Indiana) be charged for and computed on the basis of regular tariff rates.

(c) It requires the rejection of the said lease unless substantially all of the bondholders of the Terre Haute (including the Southern Indiana) do not consent to the Plan, in spite of the fact that the lease is profitable to the Debtor. The provisions in the Plan, which are enumerated in article "G" of the Order of the Interstate Commerce Commission dated June 4, 1940, are so unfair and inequitable to Terre Haute's bondholders (including the bondholders of Southern Indiana), that in effect it amounts to a rejection of the lease.

(d) It seeks to force a consolidation of the profitable Terre Haute (including the Southern Indiana) with the bankrupt Debtor in these proceedings, in which neither the Court nor the Commission has jurisdiction over the Terre Haute or any of its subsidiaries (including the Southern Indiana) for the reason that no petition under Section 77 of the Bankruptcy Act has been filed by or against them, nor are they in receivership in any State or Federal Court, nor has any proceeding been begun pursuant to the appro-

priate provisions of the Interstate Commerce Act for the consolidation of the Terre Haute and its subsidiaries (including the Southern Indiana) with the Debtor.

197 (e) No provision is made in the Plan for the satisfaction of the claim of the Terre Haute and its subsidiaries (including the Southern Indiana) against the Debtor for the $5,000,000, more or less of equipment vacancies existing as of June 30, 1935, nor for the replacement by the Debtor's trustees of the equipment vacancies which have accrued since June 30, 1935, to date of consummation of the Plan, nor for payment to the Terre Haute and its subsidiaries (including the Southern Indiana) of the values thereof aggregating in excess of $2,000,000, more.

(f) It seeks to compel that the bondholders of the Terre Haute (including the Southern Indiana) to consent to what amounts to a reduction of rental under said lease with consequent reduction of interest on their bonds, so as to enable the reorganized Debtor to pay more interest on the new bonds which it is proposed shall be issued to the Debtor's bondholders and creditors in exchange for their claims, despite the facts that the lease is profitable to the Debtor and that the Terre Haute has not failed in the due performance of the terms and conditions provided in the lease to be performed by it.

(g) It does not conform to the requirements of the law regarding the participation of the various classes of creditors of the Debtor, assuming but not admitting the bondholders of the Terre Haute (including the Southern Indiana) to be such creditors, in that such law does not permit junior or general creditors of a bankrupt to participate in the earnings of property covered by a first mortgage until the holders of the first mortgage are satisfied in full for interest and principal, whereas the Plan would take earnings of the properties subject to the first mortgages securing the bonds of the Terre Haute (including the Southern Indiana), and pay them to junior or other creditors.

198 APPENDIX B.

Claims for Equitable Treatment.

Claims for Equitable Treatment Filed by Terre Haute Income Mortgage Bondholders' Committee, on November 6, 1940.

In order to afford fair and equitable treatment to the Terre Haute and its security holders, the Modified Plan of Reorganization of the Debtor should be disapproved by the Court in respect of the matters affecting the Terre Haute and its bondholders. The claims of this Committee for fair and equitable treatment are as follows:

1. That the existing Lease of the Terre Haute properties to the Milwaukee should be adopted by the reorganized Debtor.

2. That the Trustees of the Debtor should make good the equipment vacancies under the Lease and under the mortgages securing the Terre Haute Bonds.

Claims for Equitable Treatment Filed by Mercantile National Bank of Chicago and Benjamin H. Rubenzik, as Successor Trustees Under the Indenture of Trust of the Bedford Belt Railway Company Dated June 1, 1898, on August 1, 1940.

1. That in April, 1898, the Bedford Belt Railway Company duly authorized the issuance of its bonds to be known as First Mortgage Gold Bonds, in the aggregate principal amount not exceeding Five Hundred Thousand Dollars ($500,000), maturing July 1, 1938, and bearing interest at 5% per annum, payable semiannually, and the execution of an Indenture to secure payment thereof; that in pursuance of said authority, the Bedford Belt Railway Company duly executed and delivered to the Equitable Trust Company of Chicago, as Trustee, its Indenture dated June
1, 1898 (hereinafter sometimes called the "Inden-
199 ture"), to secure the payment of the principal and interest of all of the bonds at any time issued or outstanding thereunder; that the Mercantile National Bank of Chicago and Benjamin H. Rubenzik are now the Successor Trustees under said Indenture.

2. That from time to time, since the execution of the

Indenture, there was duly authenticated and delivered by the predecessors of said Trustees, as provided in the Indenture, Three Hundred Fifty Thousand Dollars ($350,000) principal amount of bonds, each bearing interest at the rate of 5% per annum. Said bonds were duly executed by the obligor and duly delivered pursuant to the terms of the Indenture, and all thereof were duly issued and are now outstanding. Two Hundred Fifty Thousand Dollars ($250,000) of said bonds so issued are outstanding in the hands of the public and One Hundred Thousand Dollars ($100,000) thereof were deposited with the corporate trustee under a first and refunding mortgage of the Chicago, Terre Haute and Southeastern Railway Company, under the terms thereof, in exchange for an equal face amount of first and refunding bonds, and are now held by the said corporate trustee as security for first and refunding mortgage bonds of the Chicago, Terre Haute and Southeastern Railway Company pursuant to the terms of said first and refunding mortgage.

3. That on or about December 1, 1910, the Bedford Belt Railway Company conveyed all of its property of every kind and nature, real, personal and mixed, to the Chicago, Terre Haute and Southeastern Railway Company. Thereafter, on or about July 1, 1921, the Chicago, Terre Haute and Southeastern Railway Company leased substantially all of its properties to the Chicago, Milwaukee 200 and St. Paul Railway Company, and, in and by said lease, Chicago Milwaukee and St. Paul Railway Company assumed and agreed to pay the principal and interest of the Two Hundred Fifty Thousand Dollars ($250,000) First Mortgage 5% Gold Bonds of the Bedford Belt Railway Company outstanding in the hands of the public. On or about January 19, 1927, this Court entered a decree approving the reorganization plan of the Chicago, Milwaukee and St. Paul Railway Company. Under this reorganization plan, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the debtor herein, acquired substantially all of the assets of the Chicago, Milwaukee and St. Paul Railway Company and assumed the obligations of the Chicago, Milwaukee and St. Paul Railway Company under the lease dated July 1, 1921, between the Chicago, Terre Haute and Southeastern Railway Company, as lessor, and the Chicago, Milwaukee and St. Paul Railway Company, lessee, and thereby became obligated to pay the principal of and interest on said Two Hundred Fifty Thou-

said Dollars ($250,000) 5% First Mortgage Gold Bonds of the Bedford Belt Railway Company outstanding in the hands of the public. That, since the acquisition as aforesaid of the assets of the Chicago, Milwaukee and St. Paul Railway Company, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company has continuously been in possession of and operated the property of the Chicago, Terre Haute and Southeastern Railway Company, including the property of said Bedford Belt Railway Company.

4. That the said bonds of the Bedford Belt Railway Company matured on July 1, 1938; that prior to July 1, 1938, the trustees of the property of the Chicago, Milwaukee and St. Paul Railway Company filed a petition for
201 instructions in respect to the maturity on July 1, 1938, of the bonds of the Bedford Belt Railway Company outstanding in the hands of the public in the amount of $250,000; that the Successor Trustees under said Indenture of the Bedford Belt Railway Company filed an answer herein asking that the bonds be paid at maturity by the Trustees of the property of the Debtor; that on June 28, 1938, the Honorable James H. Wilkerson, one of the judges of this court, entered a decree instructing the trustees of the property of the Debtor not to use the funds in the trust estate at this time and until further order of the Court for the purpose of paying the principal, or any part thereof, of the said First Mortgage Gold Bonds of the Bedford Belt Railway Company; that, until the further order of the Court, the Trustees of the Debtor were directed to make the semi-annual payments of interest on said bonds outstanding in the hands of the public; that the Court reserved full right at any time by such further orders in the premises as the Court may deem proper to amend, extend, limit, modify, or otherwise change or rescind said order.

5. That the modified plan of reorganization of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company filed herein on June 14, 1940 provides that the Indenture of the Bedford Belt Railway Company and the bonds issued thereunder shall be modified in such manner as to provide for: (a) the extension of the maturity of the bonds; (b) the bonds to bear fixed interest at the rate of 2.75% per annum and contingent interest at the rate of 1.5% interest per annum, instead of the present fixed rate of 5%; (c) the holders of the bonds to waive equipment vacancies existing at the present time; (d) the new company in
202 the replacement of equipment retired after the effec-

tive date of the plan, to include equipment purchased under equipment trust under certain conditions; (e) the mortgages to contain appropriate provisions for the abandonment of such property of the Chicago, Terre Haute and Southeastern Railway Company as the Board of Directors may deem it to the interest of the system to abandon it; (f) the guaranty of the Chicago, Milwaukee and St. Paul Railway Company endorsed on the bonds to be voided and a new lease made between the Chicago, Terre Haute and Southeastern Railway Company, replacing the present lease between the Chicago, Terre Haute and Southeastern Railway Company and the Debtor, or in the alternative that if the plan is not accepted by substantially all of the Chicago, Terre Haute and Southeastern Railway Company bondholders, including the Bedford Belt Railway Company, the existing lease between the Chicago, Terre Haute and Southeastern Railway Company and the Debtor, together with the guaranty of the payment of the principal and interest of all of the Chicago, Terre Haute and Southeastern Railway Company mortgage bond issues, shall be rejected and such other appropriate adjustments made by the court as the court may deem necessary to put the plan into effect.

6. That the lease between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and the Chicago, Terre Haute and Southeastern Railway Company is profitable and advantageous to the Debtor and is not a burden upon the estate of the Debtor, and, in equity and good conscience, its terms and conditions should be carried out by the Debtor.

7. That neither the Chicago, Terre Haute and Southeastern Railway Company nor the Bedford Belt Railway Company has filed petitions for reorganization in
203 these proceedings, and, accordingly, neither the Commission nor the Court has the power or authority to establish a plan of reorganization for the debtor which would alter or modify the terms of the Bedford Belt Railway Company bonds or the Indenture securing the same.

8. That said plan, in so far as Bedford bondholders are concerned, is inequitable because of the coercive nature of the offer made to said bondholders, in that it provides that unless said bondholders accept the modified plan of reorganization, the lease is to be terminated.

The undersigned Trustees, therefore, respectfully suggest to the Court that the provisions contained in para-

graph (G) of said modified plan of reorganization, respecting the Bedford Belt Railway Company bonds, should be rejected and that the Debtor should be required to carry out all the terms and conditions of said lease.

Joint and Several Claims for Equitable Treatment Filed By Massachusetts Mutual Life Insurance Company and The Prudential Insurance Company of America, on August 1, 1940.

1. These objectors claim that the aforesaid lease of the properties of the Terre Haute should be assumed and adopted by the reorganized company, and that appropriate provision to that effect should be made in the plan of reorganization.

2. These objectors claim that the aforesaid guaranty of the payment of the principal and interest of the Terre Haute income mortgage bonds should be assumed and adopted by the reorganized company, and that appropriate provision to that effect should be made in the plan of reorganization.

3. These objectors further claim that, in the event the aforesaid lease is not adopted, said lease must be re-
204 jected prior to the taking of the vote upon the plan of reorganization proposed for the debtor company to the end that any party or parties who may become creditors of the debtor by reason of such rejection shall be entitled to participate in the voting upon said plan pursuant to the statute.

4. These objectors further claim that, in the event said lease is rejected, such rejection must be made as of the date of the filing of the debtor's petition for reorganization herein, and that the plan of reorganization for the debtor herein must make appropriate provision for the payment to the Terre Haute of all profits derived by the debtor's trustees or the debtor's estate in the operation of said properties subsequent to said date.

Wherefore, Massachusetts Mutual Life Insurance Company and The Prudential Insurance Company of America pray that the Court disapprove the plan of reorganization certified to the Court by the Interstate Commerce Commission, and move that the Court enter an order referring the proceedings back to the Interstate Commerce Commission for further action.

Claims for Equitable Treatment Filed by Chicago, Terre Haute and Southeastern Railway Company, on August 1, 1940.

In Order to Afford Fair and Equitable Treatment to the Terre Haute and Its Security Holders, Said Modified Plan of Reorganization Should Be Disapproved by the Court in Respect of the Matters Covered By the Foregoing Objections. The Claims of the Terre Haute for Fair and Equitable Treatment Are as Follows:

1. That the existing lease of July 1, 1921, shall be adopted by the new company; or, if this claim be rejected by the Court the following claim be approved in lieu thereof:

205 2. That the existing lease of July 1, 1921, shall be adopted by the new company in the event that said lease be modified and the several mortgage indentures securing the bonds which constitute liens upon all or any part of the Terre Haute properties be modified by substantially all the Terre Haute bondholders (such modifications of mortgage indentures to be submitted to the Terre Haute bondholders in accordance with the method prescribed therefor in the modified plan of reorganization) in the following respects and no other:

(a) The maturity of all such bonds shall be the date of maturity of the first mortgage series A bonds of the new company;

(b) The holders of said bonds shall waive all equipment vacancies under the existing mortgages up to June 29, 1935;

(c) The new company may, in the replacement of equipment vacancies occurring on and after June 29, 1935, include equipment purchased under equipment trusts, the lien of the trusts not to exceed 75 per cent of the total cost of the equipment;

(d) The mortgages shall contain appropriate provisions permitting, subject to the approval of the Interstate Commerce Commission, abandonment of Terre Haute property which the board of directors of the new company may deem it to the interests of the system to abandon.

Claims for Equitable Treatment Filed by Continental Illinois National Bank and Trust Company of Chicago, as Trustee for Chicago, Terre Haute and Southeastern Railway Company First, and Refunding Mortgage Bonds, on August 1, 1940.

In Order to Afford Fair and Equitable Treatment to the Holders of Terre Haute First Mortgage Bonds, the Plan Insofar as it Affects Said First Mortgage Bonds Should Be Disapproved By the Court. The Claims of the Trustee for Fair and Equitable Treatment Are as Follows:

1. That the Lease shall be adopted forthwith by the Milwaukee trustees in such manner as to be binding upon the new company formed under any plan of reorganization of Milwaukee.

206 2. That if this claim be rejected by the Court, then in the alternative, the Milwaukee trustees, as a condition precedent to rejection of the Lease, shall forthwith, after prompt accounting under the direction of the Court, pay in cash to Terre Haute the profits and savings accrued to said trustees from the lease over and above rentals actually paid to Terre Haute.

3. That as a further condition precedent to such rejection of the Lease, the Milwaukee trustees shall forthwith, after a prompt accounting under the direction of the Court, pay in cash to Terre Haute reasonable rental for all equipment and rolling stock of Terre Haute removed from the Terre Haute lines and used by the Trustees on other lines from June 29, 1935, to date.

4. That as a further condition precedent to such rejection of the Lease, the Milwaukee trustees shall also be required forthwith to replace all equipment and rolling stock usable at time of removal, removed by them from the Terre Haute lines, either in kind or with equipment of equal value satisfactory to Terre Haute as being suitable for operation on its lines, or pay in cash the fair value of any equipment which it is unable so to replace as determined by a prompt accounting under the direction of the Court.

5. That upon such rejection, the Milwaukee trustees or the reorganized company shall, at the request of Terre Haute, operate the Terre Haute lines for the account of Terre Haute until Terre Haute elects to conduct an independent operation or to affiliate with some other carrier.

The Trustee finds itself unable to recommend to the holders of Terre Haute First Mortgage Bonds any
207 modification of the Lease which would reduce the interest to be paid on said bonds or otherwise jeopardize the rights or security of the holders of said bonds.

Claims for Equitable Treatment Filed by Chicago, Terre Haute and Southeastern Railway Company First Lien Bondholders Committee, on August 1, 1940.

In Order to Afford Fair and Equitable Treatment to the Terre Haute and Its Security Holders Said Modified Plan of Reorganization Should Be Disapproved by the Court in Respect of the Matters Affecting the Terre Haute and Its Bondholders Covered By the Foregoing Objections. The Claims of the Said Committee for Their Terre Haute First Lien Bondholders for Fair and Equitable Treatment Are as Follows:

1. That the existing lease dated July 1, 1921, of the Terre Haute's lines of railway and properties to the Milwaukee shall be adopted by the new company.

2. That the Milwaukee trustees and/or the new company should make good, in kind, the equipment vacancies existing under said lease and under the mortgages securing the Terre Haute bonds, as of June 30, 1935, and which have accrued and shall accrue up to the date of consummation of the Plan.

3. The Milwaukee trustees, although they have been in possession of and have operated the Terre Haute since their appointment, have not assumed or rejected the said lease, and while they have paid a rental sufficient to pay interest upon the Terre Haute bonds, they have not paid the rental reserved in the lease, even though they have derived an average annual profit since June 30, 1935 of about $1,500,000 after the payment of rental. During said period the Milwaukee trustees have permitted equipment vacancies under said lease and under the said mort-
208 gages securing the Terre Haute bonds to accumulate to an extent of more than $2,000,000 in addition to the above $5,000,000 of such vacancies which had accrued up to July 1, 1935.

That the Milwaukee trustees are obligated either to pay the rent reserved in said lease, or to account and pay to the Terre Haute the earnings of the Terre Haute prop-

erties after payment of the expenses thereof, but they have failed and refused to do either.

The earnings of the Terre Haute should be segregated and placed in a separate fund, together with the net earnings of the Terre Haute since June 30, 1935, for the benefit of the Terre Haute and its bondholders to make good the defaults of the trustees of the Milwaukee in the payment of rental and for the replacement of the equipment vacancies aforesaid, and to provide means, because of the Debtor's defaults and of the defaults of the trustees of the Debtor under said lease for the payment of the Terre Haute bonds when the same fall due.

Wherefore, the Committee, holding, by the members thereof, a substantial amount of the bonds, and further representing holders of a substantial additional amount of said bonds secured by first liens upon the lines of railway and properties of the Terre Haute, for themselves decline to consent to the modifications of their bonds, of the mortgages securing them, and of the said lease, proposed by the Interstate Commerce Commission's Order of June 4, 1940, article "G" (Mimeo. pp. 18-19-20-21), and pray leave to submit upon the hearing of these objections proof that other holders of Terre Haute first lien bonds represented by the Committee likewise decline so to consent.

209 And the Committee further prays for an order declaring that the said Modified Plan as respects the provisions affecting the Terre Haute and its bondholders is not fair and equitable to the Terre Haute bondholders; does not afford due recognition to their rights; does discriminate unfairly in favor of Milwaukee creditors as against Terre Haute bondholders and as between the various issues of Terre Haute bondholders; and does not conform to the requirements of the law of the land regarding the participation of the various classes of Terre Haute bondholders in the property and earnings of the Terre Haute, and in the property and assets of the Milwaukee; and referring the proceedings back to the Commission for further action with appropriate instructions to the effect that there is no basis in law or equity for the rejection of the Terre Haute lease, since the same is not burdensome to the Milwaukee, the Terre Haute not being in default under the lease; and that there is no basis in law or in equity for requiring the Terre Haute bondholders to agree to the modifications of their bonds, of the mortgages securing them, or of the said lease as pro-

vided in article "G" of the Order of the Interstate Commerce Commission herein dated June 4, 1940; and for such other and further relief in the premises as equity requires.

210 Claims for equitable treatment filed by Girard Trust Company, Substituted Trustee under Deed of Trust dated February 1, 1901, of the Southern Indiana Railway Company, and the Trustee under Supplemental Mortgage, dated November 30, 1910, of Chicago, Terre Haute and Southeastern Railway Company, on August 1, 1940.

1. In order to afford fair and equitable treatment to the Terre Haute and its security holders, including those of the Southern Indiana, said Modified Plan of Reorganization should be disapproved by the Court in respect of the matters affecting the Terre Haute, including the Southern Indiana, and its bondholders covered by the foregoing objections. The claims of the said Substituted Trustee and Trustee for Southern Indiana bondholders for fair and equitable treatment are as follows:

(a) That the existing lease dated July 1, 1921, of the lines of railway and properties of the Terre Haute (including those of the Southern Indiana) to the Debtor be adopted by the new Company.

(b) That the Debtor's trustees and/or the new company make good, in kind, the equipment vacancies existing under said lease, and under the mortgages securing the bonds of the Terre Haute (including the Southern Indiana), as of June 30, 1935, and which have accrued and shall accrue up to the date of consummation of the Plan.

(c) That the Debtor's trustees be required either to pay the rent reserved in said lease, including the replacement of equipment vacancies, or to account and pay to the Terre Haute and its subsidiaries (including the Southern Indiana) the earnings of the Terre Haute properties (including those of the Southern Indiana) after payment of the expenses thereof.

(d) That the earnings of the Terre Haute (including those of the Southern Indiana) be segregated and placed in a separate fund, together with the net earnings of the

Terre Haute (including those of the Southern Indiana) since June 30, 1935, for the benefit of the holders of the bonds of the Terre Haute (including the Southern Indiana) to make good the defaults of the Debtor's trustees in the payment of rental, including the replacement of equipment vacancies as aforesaid, and to provide means, because of the Debtor's defaults and of the defaults of the Debtor's trustees under said lease for the payment of the bonds of the Terre Haute (including those of the Southern Indiana) when the same fall due.

211 (e) This objector proposes to join with the Committee for the protection of holders of Terre Haute bonds (including those of the Southern Indiana) in presenting these objections, and accordingly joins in the statement contained in paragraph 4 on page 9 of the objections filed in behalf of the said Committee, that a continuation of the hearings commencing on September 4, 1940, will be requested so as to enable this objector in conjunction with the said Committee to make a further study which will enable the Court to have before it such information as may be necessary to pass upon these objections and those of the said Committee, and upon said Plan.

Wherefore, Girard Trust Company, in behalf of the holders of First Mortgage 4% Gold Bonds of the Southern Indiana, secured by Indentures, and for itself as Substituted Trustee and Trustee, as aforesaid, declines to consent to the modifications of said bonds and mortgage securing them, and of the said lease, proposed by article "G" of the Interstate Commerce Commission's Order of June 4, 1940, (Mimeo. pp. 18 to 21), and prays for an Order declaring that the existing lease dated July 1, 1921, shall be adopted by the new company, that the said Modified Plan in so far as it recommends the rejection and modification of said lease, is not fair and equitable to the Terre Haute's bondholders (including those of the Southern Indiana), that the said Modified Plan discriminates unfairly in favor of the debtor's creditors as against holders of the bonds of the Terre Haute (including those of the Southern Indiana), and does not conform with the requirements of law regarding participation of the said bondholders in the property and earnings of the Terre Haute (including the Southern Indiana), and in the property and assets of the Debtor; and referring the proceedings back to the Inter-

state Commerce Commission for further action with appropriate instructions to the effect that there is no basis in law or equity for the rejection or modification of the Terre Haute's lease, since said lease is not burdensome to the Debtor, and since Terre Haute is not in default under the lease, and further that there is no basis in law or in equity for requiring the bondholders of the Terre Haute (including those of Southern Indiana) to agree to the modifications of their bonds, of the mortgages securing them, or of the said lease as provided in Article "G" of the Order of the Interstate Commerce Commission herein dated June 4, 1940, and for such other and further relief in the premises as equity requires.

223 And on, to wit, the 12th day of December, A. D. 1940, came the United States Trust Company by its attorneys and filed in the Clerk's office of said Court its certain Notice of Appeal in words and figures following, to wit: Filed Dec. 12, 1940.

224 In the District Court of the United States

For the Northern District of Illinois,

Eastern Division.

In Proceedings for the Reorganization of a Railroad.

In the Matter of
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Debtor. } No. 60463.

NOTICE OF APPEAL OF UNITED STATES TRUST COMPANY OF NEW YORK AS TRUSTEE OF GENERAL MORTGAGE.

Notice is hereby given that United States Trust Company of New York as Trustee of the General Mortgage of the Chicago, Milwaukee and St. Paul Railway Company hereby appeals to the Circuit Court of Appeals for the Seventh Circuit from the order of this Court entered in this proceeding dated November 13, 1940, embodying the findings

of fact, conclusions of law and order and decree approving Plan of Reorganization for the Debtor.

Dated: December 9, 1940.

Stewart & Shearer,
Address:
45 Wall Street,
Manhattan, New York City,
Wilson & McIlvaine,
Address:
120 West Adams Street,
Chicago, Illinois,
Attorneys for Appellant United States Trust Company of New York as Trustees of General Mortgage of Chicago, Milwaukee and St. Paul Railway Company.

Filed Dec 12, 1940.

230 And on, to wit, the 12th day of December, A. D. 1940, came the General Mortgage Bondholders by their attorneys and filed in the Clerk's office of said Court their certain Notice of Appeal in words and figures following, to wit:

231 In the District Court of the United States

For the Northern District of Illinois,

Eastern Division.

In Proceedings for the Reorganization of a Railroad.

In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor.	No. 60463.

NOTICE OF APPEAL OF A GROUP OF GENERAL MORTGAGE BONDHOLDERS KNOWN AS THE "UNIVERSITY GROUP".

Notice Is Hereby Given that The Trustees of Princeton University, New York University, Robert Winthrop, as Trustee and Guardian, Edgar Palmer, as Trustee, Charles M. Wood, E. Schier Welch and George E. Brown, as Trus-

tees, Consolidated Investment Trust, Leo Wallerstein, United States Trust Company, as Trustee for Individual Beneficiaries, and Beekman Winthrop, individually and as Trustee, a group of General Mortgage Bondholders of the Chicago, Milwaukee and St. Paul Railway Company, known as the "University Group", Hereby Appeal to the Circuit Court of Appeals for the Seventh Circuit, from the order of this Court entered in this proceeding, dated November 13, 1940, embodying the findings of fact, conclusions of law and order and decree approving Plan of Reorganization for the Debtor.

Dated: December 9, 1940.

Frederick J. Moses,
70 Pine Street,
Borough of Manhattan,
New York, N. Y.,

Wilson & McIlvaine,
120 West Adams Street,
Chicago, Illinois,

Attorneys for Appellant "University Group" of General Mortgage Bondholders of Chicago, Milwaukee and St. Paul Railway Company.

244 And on, to wit, the 20th day of December, A. D. 1940, came the "University Group" & United States Trust Company by their attorneys and filed in the Clerk's office of said Court their certain Statement of Points in words and figures following, to wit: Filed Dec. 20, 1940.

245 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

STATEMENT OF POINTS ON APPEAL FROM ORDER APPROVING PLAN OF REORGANIZATION.

Now Come The Trustees of Princeton University, and others, constituting a Group of General Mortgage Bondholders of the Chicago, Milwaukee & St. Paul Railway Company, known as the "University Group"; and The United States Trust Company of New York, as Trustee of the General Mortgage of the Chicago, Milwaukee & St. Paul

Railway Company, and pursuant to Rule 75 (d) of the Rules of Civil Procedure for the District Courts of the United States, and Rule 9 of the Rules of the United States Circuit Court of Appeals for the Seventh Circuit, jointly and severally file their Statement of Points on Appeal from the order, judgment and decree of this Court, made and entered herein on November 13, 1940, approving a Plan of Reorganization for the Debtor herein.

Said Points are as follows:

1. The provision of the Plan which requires that $2,500,000 of the probable earnings available for fixed charges, be paid annually into the Additions and Betterments Fund for capital expenditures, is in violation of Subsection (b) (4) and of Subsection (e)(1) of Section 77 of the Bankruptcy Law and deprives the General Mortgage bond-
246 holders of their property and their property is taken in violation of the Fifth Amendment to the Constitution of the United States.

2. The General Mortgage being fully secured as to principal by a first lien on the most valuable and extensive and (except the Milwaukee and Northern) the only profitable lines owned by the Debtor, the General Mortgage bondholders are entitled to have their entire principal secured by the New First Mortgage, even though only a part of that principal may be represented by fixed interest bonds, and the provisions of the Plan allocating to them seventy-five per cent of their claims in stock and income bonds secured only by a junior mortgage subordinate to a first mortgage unlimited in amount, violate Subsections (b)(4) and (e)(1) of Section 77 of the Bankruptcy Law and deprive them of their property and their property is taken in violation of the Fifth Amendment of the Constitution of the United States.

3. No compensating advantage or fair equivalent is afforded by the Plan to compensate the General Mortgage bondholders for the subversion and impairment of their present mortgage lien.

4. The provisions of the Plan which allocate to the claims of the General Mortgage bondholders less than one-fifth of the probable income available for fixed charges, when almost the whole of that income is earned by the property upon which the General Mortgage is a first lien, are unfair and inequitable, discriminate against and do not give due recognition to the rights of the General Mortgage

bondholders, and do not conform with the requirements of the law of the land.

5. The Court erred in not deciding the question whether the "Pieces of Lines East" are subject to the General
247 Mortgage by reason of its "After acquired property clause" and in not determining that the "Pieces of Lines East", are subject to the lien of the General Mortgage.

6. To justify the dispositions made by the Plan affecting the General Mortgage bonds, it was indispensable that the Commission and the Court make findings of facts and conclusions supporting such dispositions, and such findings and conclusions were not made by either the Commission or the Court. Apart from the specific criticisms of the Plan urged in behalf of the General Mortgage bondholders and of the Mortgage Trustee, the Plan should have been rejected by the Court because of the absence of such affirmative findings.

7. The loan of the Reconstruction Finance Corporation being fully secured by collateral, the Plan provides that it be paid in First Mortgage Fixed Interest bonds, thereby reducing by nearly $12,000,000 the fixed interest bonds distributable to the General and the Milwaukee & Northern bondholders. It is paid at the expense of and in effect by those bondholders who are entitled to be subrogated to the rights of the Reconstruction Finance Corporation in that collateral and to have that collateral pledged under the mortgage which secures any contingent interest bonds allocated to those bondholders and the failure of the Plan to make such provision is in violation of Subsection (e)(1) of Section 77 of the Bankruptcy Law.

8. The provisions of the Plan including in the property covered by the New First Mortgage the "Lines West", which the Commission and the Court have found to have no past, present or future earning power, will burden permanently the profitable General Mortgage lines with the operating deficits of the "Lines West"—thereby im-
248 pairing the security for the principal and reducing the interest of the General Mortgage bondholders, and is in violation of Subsection (e)(1) of Section 77 of the Bankruptcy Law.

9. The provisions of the Plan allocating to the General Mortgage bondholders twenty per cent of their claims in Series B Contingent Interest Bonds and twenty per cent

in preferred stock, subordinate to the discretionary payment of $2,500,000 to the Additions and Betterments Fund, in part on a parity with and in part subordinate to securities allocated to subordinate and junior liens, constitute a violation of subsection (e)(1) of Section 77 of the Bankruptcy Law and deprive them of their property and their property is taken in violation of the Fifth Amendment of the Constitution of the United States.

10. The provisions of the Plan allocating to the Terre Haute bondholders $603,047 of the income available for fixed charges, (upon condition that the same be accepted by them) is unfair and inequitable, and discriminates against the General Mortgage bondholders. The Terre Haute lease should be disaffirmed.

11. The Court erred in finding as a matter of fact (Finding of Fact No. 7) that the Modified Plan of Reorganization of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, as certified to the Court by the Interstate Commerce Commission (herein called the "Plan"):

"(a) is fair and equitable,

(b) affords due recognition to the rights of each class of creditors and stockholders,

(c) does not discriminate unfairly in favor of any class of creditors or stockholders,

(d) will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders."

249 12. The Court erred in concluding as a matter of law (Conclusion No. 2) that:

"The Modified Plan conforms in all respects to the requirements of Section 77, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders and conforms to the law of the land regarding the participation of the various classes of creditors and stockholders."

13. The Court erred in concluding as a matter of law (Conclusion No. 4) that:

"Except to the extent that proposed corrections and clarifications are approved herein, all objections to the Modified Plan are overruled,"

and in thus overruling each and every one of the objections filed with the Court by these Appellants.

14. The Court erred as a matter of law (Decretal para-

graph No. IV) in ordering, adjudging and decreeing that the objections filed with the Court by these Appellants be overruled.

15. The Court erred as a matter of law (Decretal paragraph No. III) in ordering, adjudging and decreeing that:

"The Modified Plan so certified to this Court by the Commission, with the corrections and clarifications set forth in the preceding paragraph II and the reservation contained in said paragraph, is hereby approved."

Dated: December 19, 1940.

Frederick J. Moses
Wilson & McIlvaine
Attorneys for the Trustees of Princeton University, and others, constituting a Group of General Mortgage Bondholders of the Chicago, Milwaukee & St. Paul Railway Company, known as the "University Group"

Stewart & Shearer
Wilson & McIlvaine
Attorneys for the United States Trust Company of New York, as Trustee of the General Mortgage of Chicago, Milwaukee & St. Paul Railway Company.

250 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

To the Clerk of the Said District Court:

You Are Hereby Requested to prepare the record in connection with the Notices of Appeal, filed on December 12, 1940, by the Trustees of Princeton University, and others, constituting a Group of General Mortgage Bondholders of the Chicago, Milwaukee & St. Paul Railway Company, known as the "University Group," and of the United States Trust Company of New York, as Trustee of the General Mortgage of the Chicago, Milwaukee & St. Paul Railway Company, which record is to consist of the following:

Petition of Debtor for Reorganization under Section 77 of the Bankruptcy Act, filed July 29, 1935.

Order entered July 6, 1935, respecting the filing and classification of claims.

Testimony of J. W. Severs upon the hearing of the petition of the Trustees for authority to pay interest on the General Mortgage bonds in the hands of the public, before Hon. Michael L. Igoe, District Judge, on the 12th day of December, 1939. (A copy of that testimony in narrative form will be filed herewith, together with two copies of the stenographer's transcript of such testimony.)

251 Report of the Interstate Commerce Commission, dated February 12, 1940.

Supplemental Report of the Interstate Commerce Commission, dated June 4, 1940.

Supplemental Order of the Interstate Commerce Commission, dated June 4, 1940; and

The following documents and exhibits included in the record certified to the Court by the Interstate Commerce Commission with the last mentioned order;

Petition of the United States Trust Company of New York, as Trustee of the General Mortgage of the Chicago, Milwaukee & St. Paul Railway Company, for a re-hearing, filed April 11, 1940.

Petition of a Group of Institutional Investors for Supplemental Report and Modification, filed April 12, 1940.

Petition of Mutual Savings Bank Group for Modification of Order, filed April 12, 1940.

Reply of Group of Institutional Investors, filed April 22, 1940.

Reply of Mutual Savings Bank Group, filed April 22, 1940.

Exhibit No. 23, General Mortgage of Debtor, dated May 1, 1889, to secure $150,000,000 of General Mortgage Gold Bonds.

The parts of said mortgage essential to the decision of the questions presented by the appeal of these appellants and hereby designated to be certified and included in 252 the record, are as follows:

From page 10 of the Mortgage:

"Now, Therefore, This Indenture Witnesseth: That the party of the first part * * * to secure the payment * * * of said bonds * * * has granted * * * to the United States Trust Company of New York * * * as Trustee * * * of all and singular the railway and railways of said party of the first part, with the road-beds,

grades, rights-of-way, bridges, depot grounds and fixtures embracing and including all its franchises and privileges appertaining to said railways, now held by said Company, amounting in the aggregate to about 5,652 miles of railway in actual operation, described as follows:"

(Here follows a description of railroad property and equipment.)

From page 14 of the Mortgage:

"Together with all and singular the rights, privileges and corporate franchises connected with or relating to said railways, or to the construction, maintenance, use and operation of the same, whether now owned or constructed, or hereafter to be acquired or constructed * * * and also all the estate, right, title, interest, property, claim, possession and demand whatsoever as well in law as in equity of the said party of the first part, which it now has or may hereafter acquire, of, in and to the same and every part thereof * * *."

From pages 35 and 36 of the Mortgage:

"Article XX. The said party of the first part * * * hereby covenants * * * to execute and deliver any other and reasonable and necessary deed, or deeds, conveyance, or conveyances * * * for the more fully securing the payment of said bonds, particularly for the conveyance of any railways, lots, blocks, lands, property or premises, or any right or interest therein acquired by said party of the first part, or its successor, or successors, subsequent to the date hereof pertaining to the premises conveyed by this Indenture, whether now owned by the party of the first part, or hereafter acquired."

Exhibit 114: Debtor's report of ownership, condition, age, original cost and depreciated book value of equipment as of June 30, 1935.

Exhibit 139: Debtor's statement of revenues, expenses and net income of the Terre Haute Lines for the year 1936.

253 Exhibit 140: Copy of rules, agreement and the preparation of special records to show result of operation of the Chicago Terre Haute and Southeastern effective July 1, 1935.

Exhibit 141: Debtor's statement of estimated revenues, expenses and net income of Milwaukee & Northern lines for the year 1936.

Exhibit 142: Statement of method used at arriving at earnings of the Milwaukee & Northern for the year 1936.

Exhibit 143: Debtor's statement of estimated revenues, expenses and income of the Chicago, Milwaukee & Gary for year 1936.

Exhibit 144: Statement showing method used at arriving at the earnings of Chicago, Milwaukee & Gary.

Exhibit 145: Debtor's statement of estimated income of interest on lines upon which refunding mortgages are a first lien—1936.

Exhibit 146: Statement of method used at arriving at income available for lines subject to first and refunding mortgage.

Exhibit 156: Debtor's statement showing estimated revenues, expenses and net income of Milwaukee & Northern lines for the year 1936.

Exhibit 157: Debtor's statement of revenues, expenses and net income of Terre Haute lines on a cost of service basis for the year 1936.

Exhibit 158: Debtor's statement showing estimated income of general mortgage lines available for interest on equipment obligations and other funded debt for the year 1936.

Exhibit 172: Statement showing the collateral pledged as of December 31, 1937.

Exhibit 173: Statement of collateral and cash held as of January 31, 1938, by Chemical Bank and Trust Company, as Trustee under the Debtor's First and Refunding Mortgage.

Exhibit 178: Statement of operating revenues of Debtor for the years 1921 to 1937.

Exhibit 180: Summary of allocation made by the Debtor of the actual system earnings of 1936 to mortgaged districts.

Exhibit 181: Statement showing allocation made by the Debtor of the actual system earnings for the year 1936 to mortgaged districts.

254 Exhibit 182: Debtor's statement of income available for interest for 14-year period 1921 to 1934.

Exhibit 183: Statement of income available for interest for years 1921 to 1929, as modified.

Exhibit 184: Statement of capitalization of income available for interest.

Exhibit 186: Statement of elements of value as of December 31, 1935 of property underlying mortgages.

Exhibit 219: Schedule of data concerning lines of the

Debtor system. (When acquired, however, source of funds, reason for conclusion, etc.)

Intervening Petition of the United States Trust Company of New York, filed August 5, 1935.

Objections of the Trustees of Princeton University, and others, constituting a Group of General Mortgage Bondholders of the Chicago, Milwaukee & St. Paul Railway Company, known as the "University Group," filed on July 31, 1940.

Objections of the United States Trust Company of New York, as Trustee of the General Mortgage of the Chicago, Milwaukee & St. Paul Railway Company, filed on July 31, 1940.

Order entered September 4, 1940, granting petition of the Trustees of Princeton University, and others, constituting a Group of General Mortgage Bondholders of the Chicago, Milwaukee & St. Paul Railway Company, known as the "University Group," to intervene and become parties to the proceeding in this Court.

DEBTOR'S COURT EXHIBIT #6, received in evidence on the hearing before Judge Igoe on September 4, 1910.

DEBTOR'S COURT EXHIBIT #13, received in evidence on the hearing before Judge Igoe on September 5, 1940.

Memorandum of Opinion of Hon. Michael L. Igoe, 255 United States District Judge, filed October 21, 1940.

Findings of Fact, Conclusions of Law and Order and Decree approving Plan of Reorganization for Debtor, entered November 13, 1940.

Notice of Appeal of Trustees of Princeton University, and others, constituting a Group of General Mortgage Bondholders of the Chicago, Milwaukee & St. Paul Railway Company, known as the "University Group," filed on December 12, 1940.

Notice of Appeal of the United States Trust Company of New York, as Trustee of the General Mortgage of the Chicago, Milwaukee & St. Paul Railway Company, filed on December 12, 1940.

Statement of Points on Appeal of Trustees of Princeton University, and others, constituting a Group of General Mortgage Bondholders of the Chicago, Milwaukee & St. Paul Railway Company, known as the "University Group," and of the United States Trust Company of New York, as Trustee of the General Mortgage of the Chicago, Milwaukee & St. Paul Railway Company.

This Designation of Record on Appeal of the Trustees of Princeton University, and others, constituting a Group of General Mortgage Bondholders of the Chicago, Milwaukee & St. Paul Railway Company, known as the "University Group," and of the United States Trust Company of New York, as Trustee of the General Mortgage of the Chicago, Milwaukee & St. Paul Railway Company.

Proof of Service of Statement of Points on Appeal and Designation of Record on Appeal of the Trustees of Princeton University, and others, constituting a Group of
256 General Mortgage Bondholders of the Chicago, Milwaukee & St. Paul Railway Company, known as the "University Group," and of the United States Trust Company of New York, as Trustee of the General Mortgage of the Chicago, Milwaukee & St. Paul Railway Company.

You Are Hereby Requested to certify the aforesaid Record to the United States Circuit Court of Appeals, for the Seventh Circuit, within the time allowed by law.

Dated: December 19, 1940.

Trustees of Princeton University and others, constituting a Group of General Mortgage Bondholders of the Chicago, Milwaukee & St. Paul Railway Company, known as the "University Group."

Frederick J. Moses
Wilson & McIlvaine
Their Attorneys.

United States Trust Company of New York, as Trustee of the General Mortgage of the Chicago, Milwaukee & St. Paul Railway Company.

Stewart & Shearer
Wilson & McIlvaine
Its Attorneys.

320 And on, to wit, the 14th day of December, A. D. 1940 came the E. Stanley Glines Etc., et al., by Their attorneys and filed in the Clerk's office of said Court Their certain Notice of Appeal in words and figures following, to wit:

321 In the District Court of the United States, Filed Dec. 14, 1940.

For the Northern District of Illinois,

Eastern Division.

In Proceedings for the Reorganization of a Railroad.

In the Matter of
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Debtor. } No. 60463.

NOTICE OF APPEAL.

Notice Is Hereby Given, that E. Stanley Glines, Morton G. Fry, W. Rodman Peabody, R. Harland Shaw and C. Oliver Wellington, as a Protective Committee for holders of the Debtor's Fifty Year Five Per Cent. Mortgage Gold Bond, Series A, due February 1, 1975, interveners in the above entitled proceeding, hereby appeal to the Circuit Court of Appeals for the Seventh Circuit from the Findings of Fact, Conclusions of Law and Order and Decree approving Plan of Reorganization for Debtor entered in the above entitled proceeding on November 13, 1940.

Hodges, Reavis, Pantoleoni & Downey,
Hodges, Reavis, Pantoleoni & Downey,
20 Pine Street,
New York, New York,
Malcolm Mecartney,
Malcolm Mecartney,
1 North La Salle Street,
Chicago, Illinois,
Attorneys for E. Stanley Glines, Morton H. Frey, W. Rodman Peabody, R. Harland Shaw and C. Oliver Wellington, as a Protective Committee for holders of the Debtor's Fifty Year Five Per Cent. Mortgage Gold Bonds, Series A, due February 1, 1975.

Filed Dec. 14, 1940.

327 And on, to wit, the 14th day of December, A. D. 1940 came the Fifty Year Five Per Cent Mortgage Gold Bonds, Series A, etc., Committee by their attorneys and filed in the Clerk's office of said Court their certain Statement of Points in words and figures following, to wit:

328 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

STATEMENT OF POINTS ON APPEAL FROM ORDER APPROVING PLAN OF REORGANIZATION.

Now Come E. Stanley Glines, Morton H. Fry, W. Rodman Peabody, R. Harland Shaw and C. Oliver Wellington, as a Proective Committee (hereinafter sometimes referred to as "this committee") for holders of the Debtor's Fifty Year Five Per Cent. Mortgage Gold Bonds, Series A, due February 1, 1975, and pursuant to Rule 75 (d) of the Rules of Civil Procedure for the District Courts of the United States and Rule 9 of the United States Circuit Court of appeals for the Seventh Circuit, file this statement of the points on appeal from the Findings of Fact, Conclusions of Law and Order and Decree approving the Plan of Reorganization for the Debtor entered in the above entitled proceeding on November 13th, 1940. Said points are as follows:

1. The Court erred in finding as a matter of fact (finding of Fact No. 7) that the modified plan of reorganization of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, as certified to the Court by the Interstate Commerce Commission (hereinafter called the "Plan"):

"(a) is fair and equitable,

(b) affords due recognition to the rights of each class of creditors and stockholders,

(c) does not discriminate unfairly in favor of any class of creditors or stockholders,

(d) will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders."

2. The Court erred in finding as a matter of fact (finding of fact No. 4) that the Debtor and the Debtor Trustees have filed with the Court such information "as was required or necessary to disclose the conduct of debtor's affairs, the operation of the Debtor's properties and the

fairness of any proposed plan of Reorganization;"
329 and that "The Debtor and the Trustees have taken all steps and furnished all information necessary or required as preliminary to the consideration of a plan of reorganization."

3. The Court erred in incorporating by reference in its finding of fact No. 15 all findings, statements and recitals of fact made by the Interstate Commerce Commission in so far as such findings, statements and recitals of fact are contrary to, or fail to give effect to, the objections dated July 31, 1940, filed with the Court by this Committee.

4. The Court erred in concluding as a matter of law (conclusion No. 2) that;

"The Modified Plan conforms in all respects to the requirements of Section 77, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders and conforms to the law of the land regarding the participation of the various classes of creditors and stockholders."

5. The Court erred in concluding as a matter of law (conclusion No. 4) that;

"Except to the extent that proposed corrections and clarifications are approved herein, all objections to the Modified Plan are overruled."

in overruling each and every one of the objections dated July 31, 1940, filed with the Court by this Committee, said objections being as follows;

"Come now your petitioners, E. Stanley Glines, Morton H. Fry, W. Rodman Peabody, R. Harland Shaw and C. Oliver Wellington, as a Protective Committee (hereinafter referred to as the "Committee") for Holders of the Debtor's Fifty Year Five Per Cent. Mortgage Gold Bonds, series A, due February 1, 1975 (hereinafter referred to as the "5s of '75), and object to the Modified Plan of Reorganization of the Debtor (hereinafter referred to as the Modified Plan") set forth in the Supplemental Report and Order, certified to the Court by the Interstate Commerce Commission on July 14, 1940, and claim equitable treatment in the particulars and on the grounds hereinafter set forth;

First, The Modified Plan is based on business conditions for the past ten years, and business conditions for the past ten years, particularly with respect to railroads, involve a period of exceptional business depression and the true

earning capacity of the Debtor cannot be determined on the basis thereof. Moreover, the test year on which the Modified Plan is based is 1936 which was an abnormal year extremely unfavorable to the lines west and hence unfair to the 5s of '75.

Second, Even if business conditions for the past ten years (particularly 1936) are to be regarded as affording a true text of the earning capacity of the Debtor, there is not sufficient data in the record to support the modified Plan.

Third: Even assuming that the true earning capacity of the Debtor can be determined from the conditions for the past ten years, (particularly 1936) and that there is adequate data in the record, the so-called "Formula" which was used for the purpose of determining relative priorities is arbitrary and unfair to the 5s of '75.

330 Fourth: The Modified Plan gives no recognition to the fact that in computing earnings available for interest for any test period, the 5s of '75 should be credited with the excess earnings of the Terre Haute and the Milwaukee & Northern and that even for the year 1936 earnings properly applicable to the 5s of '75 amounted to approximately $2,000,000.

Fifth: The Modified Plan takes away from holders of the 5s of '75 their virtual first lien on the lines west, comprising 2860.39 miles of rail (almost a railroad system in itself), the pieces of lines east and the stock and lease of the Terre Haute and certain other property of the debtor and gives a prior lien on such property, in the form of new securities, to the Generals. Despite their virtual first lien on the lines west, the Modified Plan does not give the 5s of '75 any of the new first mortgage bonds or of the new Series A bonds and thus deprives holders of the 5s of '75 of their property without due process of law and just compensation, in violation of the Constitution of the United States.

Sixth: The Modified Plan is unfair and inequitable in that it fails to recognize the value of the security of the 5s of the '75 on the same basis of priority that is adopted in the recognition of the value of other property included in the new First Mortgage Lien, and fails to give due recognition to the property of holders of the 5s of '75. In particular, the Modified Plan does not give effect, in its allocation of securities, to the value of the Physical property covered by the lien of the 5s of '75, to the value of the lines

west as a single system divorced from the rest of the Debtor's property, to the value of the lines west in the event of the consolidation of the Debtor with other railroads, to the value of the lines west as an integral part of the Debtor's system, to the value of the lines west in the event of the future development, industrial and otherwise, of the western part of the United States, to the value of the lines west as a direct outlet to the coast which is an inducement to shippers to locate themselves on the eastern lines, thus holding large quantities of traffic which is purely loca, to eastern lines or to the lien of the 5s of '75 on the pieces of lines east.

Seventh: The Modified Plan should be made effective as of July 1, 1935, as the nearest convenient accounting date to the date of the filing of the petition herein and the fixing of rights thereunder, instead of January 1, 1939, and if any later date is adopted the rights of the holders of new securities in income subsequent to July 1, 1935 should be adjusted retroactively to said date and their rights of participation in such income limited to what they would have received if the effective date had been July 1, 1935, and equitable provision made for the payment thereof.

Eighth: The Voting Trust provided for in the Modified Plan is unfair to the 5s of '75, is contrary to equity and deprives those who receive stock in the reorganized company under the Plan, of those voting rights which contribute to the value of the stock received and without which the stock so received becomes wholly inadequate for purposes of the Plan.

Ninth: The Optional payment to the additions and Betterments fund should come after dividends on the new preferred Stock.

Tenth: If preferred Stock is given to the 5s of '75, it should be convertible into Common Stock at any time at the option of the Holder."

6. The Court erred as a matter of law (Decretal Paragraph No. IV) in ordering, adjudging and decreeing that the objections dated July 31, 1940, filed with the Court 331 by this Committee set forth in preceding paragraph 5, be overruled.

7. The Court erred as a matter of law (Decretal Paragraph No. III) in ordering, adjudging and decreeing that "The Modified Plan so certified to this Court by the Commission, with the corrections and clarifications set

forth in the preceding paragraph 11 and the reservation contained in said paragraph, is hereby approved,"

8. The Commission erred in failing to make adequate or any findings of fact in respect of the value of Debtor's property to the determination of the relative priorities of the various classes of Debtor's creditors and failing to award to the bondholders represented by these appellants the securities and shares in the reorganized company to which said bondholders are lawfully and equitably entitled by virtue of their priority of position in ownership of Debtor's assets, and in failing to recognize such priority of said bondholders in respect to those classes of creditors entitled to a priority senior to appellants' said bondholders and those classes junior thereto, and the Court erred in not refusing to approve said Plan because of said manifest error.

9. The Court erred in failing to make adequate or any findings of fact in respect of the value of Debtor's property essential to the determination of the relative priorities of the various classes of Debtor's creditors and failing to award to the bondholders represented by these appellants the securities and shares in the reorganized company to which said bondholders are lawfully and equitably entitled by virtue of their priority of position in ownership of debtor's assets, and in failing to recognize such priority of said Bondholders both in respect to those classes of creditors entitled to a priority senior to appellants' said bondholders and those classes junior thereto.

Dated: December 14, 1940.

Hodges, Reavis, Pantoleoni & Downey,
Hodges, Reavis, Pantoleoni & Downey,
20 Pine Street,
New York, New York,
Malcolm Mecartney,
Malcolm Mecartney,
1 North La Salle Street,
Chicago, Illinois,
Attorneys for E. Stanley Glines, Morton H. Frey, W. Rodman Peabody, R. Harland Shaw and C. Oliver Wellington, as a Protective Committee for holders of the Debtor's Fifty Year Five Per Cent. Mortgage Bold Bonds, Series A, due February 1, 1975.

221 And on, to wit, the 23rd day of December, A. D. 1940, came the Reconstruction Finance Corporation by its attorneys and filed in the Clerk's office of said Court its certain Names of Appellees and Names and Addresses of Appellees' Attorneys in words and figures following, to wit: Filed Dec. 23, 1940.

222 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—60463) • •

NAME OF APPELLEE, RECONSTRUCTION FINANCE CORPORATION, AND NAMES AND ADDRESSES OF ITS ATTORNEYS OF RECORD FOR INCLUSION IN THE RECORD ON APPEAL PURSUANT TO RULE 10 (3) OF THE RULES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Reconstruction Finance Corporation files this statement of its name as appellee for inclusion in the record on appeal pursuant to Rule 10 (3) of the Rules of the United States Circuit Court of Appeals for the Seventh Circuit. In further compliance with said Rule, the names and addresses of the attorneys of record for said appellee are Cassius M. Clay, care of Reconstruction Finance Corporation, Washington, D. C. and Lee Walker, 164 West Jackson Boulevard, Chicago, Illinois.

Reconstruction Finance Corporation,
By Lee Walker.

Dated: December 23, 1940.

Cassius M. Clay,
Assistant General Counsel
Reconstruction Finance Corporation
Washington, D. C.

64 And on, to wit, the 26th day of December, A. D. 1940, came the City Bank Farmers Trust Co., by its attorneys and filed in the Clerk's office of said Court its certain Name of Appellee and Names and Addresses of Its Attorneys in words and figures following, to wit:

Filed Dec. 26, 1940. 65 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

NAME OF APPELLEE, CITY BANK FARMERS TRUST COMPANY, AS SUCCESSOR TRUSTEE, AND NAMES AND ADDRESSES OF ITS ATTORNEYS OF RECORD, FOR INCLUSION IN THE RECORD ON APPEAL PURSUANT TO RULE 10(3) OF THE RULES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Name of Appellee:

City Bank Farmers Trust Company, as Successor Trustee under the First Mortgage, dated as of June 10, 1880, and as Successor Trustee under the Consolidated Mortgage, dated as of February 11, 1884, both made by Milwaukee and Northern Railroad Company.

Names and Addresses of Appellee's Attorneys of Record:

John B. Marsh,
Edward E. Watts, Jr.,
20 Exchange Place,
New York, New York,
Walter H. Jacobs,
Anthony L. Michel,
38 South Dearborn St.,
Chicago, Illinois,
Attorneys.
Mitchell, Taylor, Capron & Marsh,
20 Exchange Place,
New York, New York,
Winston, Strawn & Shaw,
38 South Dearborn St.,
Chicago, Illinois,
Of Counsel.

Dated: December 26, 1940.

66 And on, to wit, the 27th day of December, A. D. 1940, came the Group of Institutional Investors by their attorneys and filed in the Clerk's office of said Court their certain Name of Appellee and Names and Addresses of Appellees' Attorneys in words and figures following, to wit:

67 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Dec. 27, 1940.

(Caption—60463)

NAMES OF APPELLEE, GROUP OF INSTITUTION INVESTORS, HOLDERS OF SECURITIES OF THE DEBTOR, AND NAMES AND ADDRESSES OF ITS ATTORNEYS OF RECORD, FOR INCLUSION IN THE RECORD ON APPEAL PURSUANT TO RULE 10 (3) OF THE RULES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The Group of Institutional Investors, Holders of securities of the Debtor (sometimes known as the Life Insurance Group), which is composed of not more than 25 bona fide holders of interests of securities of the debtor, acting together for their own interests and not for others, intervenor by its Executive Committee in this proceeding and in the proceeding for the reorganization of the debtor before the Interstate Commerce Commission, files this statement of its name as appellee for inclusion in the record on appeal from the order entered November 13, 1940, approving a plan of reorganization for the debtor, pursuant to Rule 10(3) of the Rules of the United States Circuit Court of Appeals for the Seventh Circuit. In further compliance with said Rule, the names of the attorneys of record for said Appellee are Kenneth F. Burgess, Douglas F. Smith, and George Ragland, Jr., the address of each of said attorneys is 11 South La Salle Street, Chicago, Illinois and counsel for said appellees are Sidley, McPherson, Austin & Burgess, 11 South La Salle Street, Chicago, Illinois.

Group of Institutional Investors,
Holders of Securities of the Debtor,
By Kenneth F. Burgess,
Its Attorney.

315 And on, to wit, the 27th day of December, A. D. 1940, came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Name of Appellees, and Names and Addresses of Appellees' Attorneys in words and figures following, to wit:

Filed Dec. 27, 1940

316 IN THE DISTRICT COURT OF THE UNITED STATES.

* * * (Caption—60463) * *

NAME OF APPELLEES, HENRY A. SCANDRETT, WALTER J. CUMMINGS AND GEORGE I. HAIGHT, TRUSTEES OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, AND NAMES AND ADDRESSES OF ITS ATTORNEYS OF RECORD, FOR INCLUSION IN THE RECORD ON APPEAL, PURSUANT TO RULE 10 (3) OF THE RULES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, file this statement of their names, as appellees, for inclusion in the record on the appeal from the Order, Judgment and Decree of this Court, approving Plan of Reorganization for Debtor, made and entered herein on November 13, 1940, pursuant to Rule 10 (3) of the Rules of the United States Circuit Court of Appeals for the Seventh Circuit.

In further compliance with said Rule, the names of the attorneys of record for said appellees are A. N. Whitlock and C. S. Jefferson, the address of each of said attorneys in 888 Union Station Building, Chicago, Illinois.

Henry A. Scandrett,
Walter J. Cummings and
George I. Haight,
Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
By A. N. Whitlock,
One of their Attorneys.

Dated: December 23, 1940.

219 And on, to wit, the 3rd day of January, A. D. 1941, came the Chemical National Bank and Trust Co. by its attorneys and filed in the Clerk's office of said Court its certain Names of Appellees and Names and Addresses of Appellees' Attorneys in words and figures following, to wit:

220 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Jan. 8, 1941.

(Caption—60463)

NAMES OF APPELLEES, CHEMICAL BANK & TRUST COMPANY AND HOWARD B. SMITH, AS TRUSTEES UNDER THE FIRST AND REFUNDING MORTGAGE OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DATED AS OF FEBRUARY 2, 1925, AND NAMES AND ADDRESSES OF THEIR ATTORNEYS OF RECORD, FOR INCLUSION IN THE RECORD ON APPEAL PURSUANT TO RULE 10 (3) OF THE RULES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Names of Appellees:

Chemical Bank & Trust Company and Howard B. Smith, as Trustees under the First and Refunding Mortgage of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, dated as of February 2, 1925.

Names and Addresses of Appellees' Attorneys of Record:

Boykin C. Wright and Robert M. Becket,
63 Wall Street,
New York City, New York,
A. J. Pflaum and Cobert Ets Hokin,
33 North LaSalle Street,
Chicago, Illinois,
Attorneys.

Wright, Gordon, Zachry & Parlin,
63 Wall Street,
New York City, New York,
D'Ancona, Pflaum & Kohlsaat,
33 North LaSalle Street,
Chicago, Illinois,
Of Counsel.

Dated: January 3, 1941.

Chemical Bank & Trust Company and
Howard B. Smith,
as Trustees under the First and Refunding Mortgage of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, dated as of February 2, 1925.
By Wright, Gordon, Zachry & Parlin
and
D'Ancona, Pflaum & Kohlsaat.

Filed Jan. 7 1941

70 And on, to wit, the 7th day of January, A. D. 1941, came H. C. Orton, et al., by their attorneys and filed in the Clerk's office of said Court their certain Names of Appellees and Names and Addresses of Their Attorneys in words and figures following, to wit:

71 In the District Court of the United States.

* * * (Caption—60463) * *

NAMES OF APPELLEES, H. C. ORTON, KARL A. MEYER, RUCKER PENN, J. B. JOHNSTON AND D. C. WOLF, PREFERRED STOCKHOLDERS COMMITTEE, AND THE NAMES AND ADDRESSES OF THEIR ATTORNEYS OF RECORD, FOR INCLUSION IN THE RECORD ON APPEAL PURSUANT TO RULE 10 (3) OF THE RULES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Names of Appellees:

H. C. Orton, Karl A. Meyer, Rucker Penn, J. B. Johnston and D. C. Wolf, as Protective Committee for the Holders of Preferred Stock of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Names and Addresses of Appellees' Attorneys of Record:

Edward R. Johnston,
11 South La Salle Street, Chicago, Illinois.
Albert K. Orschel,
11 South La Salle Street, Chicago, Illinois,
Attorneys.

Poppenhusen, Johnston, Thompson & Raymond,
11 South La Salle Street, Chicago, Illinois,
Of Counsel.

Dated January 7, 1941.

H. C. Orton,
Karl A. Meyer,
Rucker Penn,
J. B. Johnston,
D. C. Wolf,
Preferred Stockholders Committee.

Edward R. Johnston and
Albert K. Orschel,
By Edward R. Johnston, and
Albert K. Orschel,
Its Attorneys.

72 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

NOTICE.

To:

Wilson & McIlvaine, 120 West Adams Street, Chicago, Illinois;

West & Eckhart and Wm. A. McSwaine, 38 South Dearborn Street, Chicago, Illinois;

Gann, Secord, Stead & McIntosh, 135 South La Salle Street, Chicago, Illinois;

Bell, Boyd and Marshall, 135 South La Salle Street, Chicago, Illinois;

E. S. Ballard and Minier Sargent, 120 South La Salle Street, Chicago, Illinois;

W. F. Peter, La Salle Street Station, Chicago, Illinois;

Cassels, Potter & Bentley, 209 South La Salle Street, Chicago, Illinois;

Mayer, Meyer, Austrian & Platt, 231 South La Salle Street, Chicago, Illinois;

Shulman, Shulman & Abrams, 134 North La Salle Street, Chicago, Illinois;

Winston, Strawn & Shaw, First National Bank Building, Chicago, Illinois;

Tenney, Harding, Sherman & Rogers, 120 South La Salle Street, Chicago, Illinois;

Sabath, Perlman, Goodman & Rein, 10 South La Salle Street, Chicago, Illinois;

73 Montgomery, Hart, Pritchard & Herriott, 120 South La Salle Street, Chicago, Illinois;

McDonald & Richmond, 7 South Dearborn Street, Chicago, Illinois;

Sidley, McPherson, Austin & Burgess, 11 South La Salle Street, Chicago, Illinois;

Charles W. Paltzer, 111 West Washington Street, Chicago, Illinois;

Malcolm Mecartney, 1 North La Salle Street, Chicago, Illinois;

Lee Walker, 164 West Jackson Boulevard, Chicago, Illinois;

Nicholson, Snyder, Chadwell & Fagerburg, 135 South La Salle Street, Chicago, Illinois;

Jesse L. Cook, 33 North La Salle Street, Chicago, Illinois;
John A. Sheean, 208 South La Salle Street, Chicago, Illinois;
S. C. Murray, General Counsel, New York Central Railroad, Chicago, Illinois;
Scott, MacLeish & Falk, 134 South La Salle Street, Chicago, Illinois;
Theodore Schmidt and M. J. Haberkorn, Attorneys for The Pennsylvania Railroad, Union Station Building, Chicago, Illinois;
Hunt, Hill & Betts, 120 Broadway, New York City;
Reese D. Alsop, Representing Lemuel McHenry, et al., 120 Broadway, New York City;
Barnes, Myers & Price, 1601 Morris Building, Philadelphia, Pa.;
Guggenheimer & Untermyer, 30 Pine Street, New York City;
Frederick J. Moses, 70 Pine Street, New York City;
Jack E. Bagon, 475 Fifth Avenue, New York City;
Shearman & Sterling, 55 Wall Street, New York City;
A. L. Skolnik, 1147 Empire Building, Milwaukee, Wisconsin;
Mitchell, Taylor, Capron & Marsh, 20 Exchange Place, New York City;
F. C. Nicodemus, Jr., c/o Pierce & Greer, 40 Wall Street, New York City;
Hodges, Reavis, Pantaleoni & Downey, 20 Pine Street, New York City;
Oliver & Donnally, 110 East 42nd Street, New York City;
R. H. McRoberts, c/o Bryan, Williams, Cave & McPheeters, 314 North Broadway, St. Louis, Missouri;
74 Julius Weiss, 122 East 42nd Street, New York City;
Davis, Polk, Wardwell, Gardiner & Reed, 15 Broad Street, New York City;
C. M. Clay, Assistant General Counsel, Reconstruction Finance Corporation, Washington, D. C.;
Stewart & Shearer, 45 Wall Street, New York City;
Victor Greiff, 173 Beach 139th Street, Belle Harbor, Long Island, New York;
H. E. Byram, Chairman of the Board of Directors, C. M. St. P. & P. R. R. Co., 52 Wall Street, New York City;

Samuel W. McIntosh, National Press Building, Washington, D. C.;
Lawrence Richardson, c/o Mitchell, Taylor, Capron & Marsh, 20 Exchange Place, New York City;
Carter, Ledyard & Milburn, 2 Wall Street, New York City;
Carmody, Roth and Mayer, 67 Broad Street, New York City;
Union Labor Life Insurance Company, Matthew Woll, President, 570 Lexington Avenue, New York City;
American Trust Company, Trustee under First Consolidated Mortgage of Bellingham Bay & British Columbia Railroad Co., 464 California Street, San Francisco, California;
McCready Sykes, Representing United States Trust Co. of New York, 45 Wall Street, New York City;
Edwin S. S. Sunderland and Thos. O. G. FitzGibbon, Representing Guaranty Trust Co. and Merrel P. Callaway, Trustees, c/o Davis, Polk, Wardwell, Gardiner & Reed, 15 Broad Street, New York City;
Thomas F. Murphy, Representing Imperial Trust Co., of New Providence, Bahamas, 41 Broad Street, New York City;
C. W. Crispell, 986 East Avenue, Bay Head, New Jersey;
Leon M. Reiter, Trustee of the Estate of Rachel P. Hyman, 314 West 77th Street, New York City;
Jeanette Bierhoff, 200 West 70th Street, New York City;
Mrs. Catherine Cornille, 4552 First Avenue, North, St. Petersburg, Florida;
A. N. Whitlock and C. S. Jefferson, 888 Union Station Building, Chicago, Illinois;
75 Wright, Gordon, Zachry & Parlin, 63 Wall Street, New York City;
D'Ancona, Pflaum & Kohlsaat, 33 North La Salle Street, Chicago, Illinois;
Metzdorff & Frantz, 231 South La Salle Street, Chicago, Illinois;
Thomas E. Noonan, 33 North La Salle Street, Chicago, Illinois;
Lewis A. Stebbins, 211 West Wacker Drive, Chicago, Illinois;
Mrs. Alice Cunningham Lacey, 73 Elm Street, Jamaica Plain, Massachusetts;

Henry W. Clark, 120 Broadway, New York City;
Henry Hoffman, 30 Pine Street, New York City;
David M. Neuberger, 154 Nassau Street, New York City;
Harry W. Achler, Assistant Attorney General, 102 State Capitol Building, St. Paul, Minn.;
William S. Ervin and Harry W. Oehler, 102 State Capitol Bldg., St. Paul, Minn.;
Ralph Norgaard, State Office Building, St. Paul, Minn.;
James B. Alley, 1825 H. Street, N. W., Washington, D. C.;
J. T. Haslam, United States Treasury, Washington, D. C.;
James L. Homire, Works Progress Administration, Interior Department Building, Washington, D. C.;
Henry T. Hunt, Interior Department Building, Washington, D. C.;
J. G. Luhrsen, Railway Labor Executive Ass'n, 10 Independence Avenue, S. W., Washington, D. C.;
Donald MacMillan, Munsey Building, Washington, D. C.;
C. Francis Murphy, Department of Justice, 805 Transportation Building, Washington, D. C.

You and Each of You Are Hereby Notified that we have this day filed with the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, a Statement of the Names of Appellees, H. C. Orton, Karl A. Meyer, Racker Penn, J. B. Johnston and D. C. Wolf, Preferred Stockholders Committee, and the Names and Addresses of their Attorneys of Record and Counsel, for inclusion in the Record on Appeal, pur-
76 suant to Rule 10 (3) of the Rules of the United States Circuit Court of Appeals for the Seventh Circuit, a copy of which said Statement is transmitted to you herewith.

Edward R. Johnston,
11 South La Salle Street,
Chicago, Illinois.
Albert K. Orschel,
11 South La Salle Street,
Chicago, Illinois.

Dated at Chicago, Illinois, this 7th day of January, 1941.

State of Illinois }
County of Cook } ss.

Albert K. Orschel, being first duly sworn, on oath deposes and says that he served the above and foregoing notice, together with a copy of the Statement therein referred to, upon each of the persons named therein, by depositing true, correct and complete copies thereof, together with copies of the Statement mentioned therein, in envelopes properly stamped, sealed and addressed, and depositing the same in the United States mail, at 11 South La Salle Street, Chicago, Illinois, at or prior to the hour of five o'clock P. M., on the 7th day of January, 1941.

Albert K. Orschel.
Albert K. Orschel.

Subscribed and sworn to before me this 7th day of January, 1941.

May Worringer,
May Worringer,
(Seal) *Notary Public.*

68 And on, to wit, the 6th day of January, 1941, came the Independent Committee for Protection of Bondholders by their attorneys and filed in the Clerk's office of said Court their certain Names of Appellees, and Names and Addresses of Their Attorneys of Record in words and figures following, to wit:

Filed Jan. 6, 1941. 69 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

NAMES OF APPELLEES, JAMES D. COLYER, LOUIS I. KANE AND HENRY SCHENK, CONSTITUTING THE INDEPENDENT COMMITTEE FOR PROTECTION OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY BONDHOLDERS, AND NAMES AND ADDRESSES OF THEIR ATTORNEYS OF RECORD, FOR INCLUSION IN THE RECORD ON APPEAL PURSUANT TO RULE 10 (3) OF THE RULES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Names of Appellees:

James D. Colyer, Louis I. Kane and Henry Schenk, constituting the Independent Committee for Protection of Chicago, Milwaukee, St. Paul and Pacific Railroad Company Bondholders.

Names and Addresses of Appellees' Attorneys of Record:

Julius Weiss,
122 East 42nd Street,
New York City, New York.

Jesse L. Cook,
33 North La Salle Street,
Chicago, Illinois.

Dated: January 6, 1941.

James D. Colyer, Louis I. Kane and Henry Schenk,
constituting the Independent Committee for Protection of Chicago, Milwaukee, St. Paul and Pacific Railroad Company Bondholders.
By: Julius Weiss and Jesse L. Cook.
Julius Weiss and
Jesse L. Cook.

77 And on, to wit, the 9th day of January, A. D. 1941, came the National City Bank of New York by its attorneys and filed in the Clerk's office of said Court its certain Names of Appellees and Names and Addresses of Appellees' Attorneys in words and figures following, to wit:

78 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Jan. 9, 1941.

* * (Caption—60463). * *

NAMES OF APPELLEES, THE NATIONAL CITY BANK OF NEW YORK AND WILLIAM W. HOFFMAN, AS TRUSTEES UNDER THE ADJUSTMENT MORTGAGE OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DATED AS OF FEBRUARY 2, 1925, AND NAMES AND ADDRESSES OF SAID APPELLEES' ATTORNEYS OF RECORD FOR INCLUSION IN THE RECORD ON APPEAL.

The National City Bank of New York and William W. Hoffman, as Trustees under the Adjustment Mortgage of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, dated as of February 2, 1925, intervenors herein, pursuant to Rule 10 (3) of the United States Circuit Court of Appeals for the Seventh Circuit, as Appellees, file this statement for inclusion in the record on appeal.

Names of Appellees:

The National City Bank of New York and William W. Hoffman, as Trustees under the Adjustment Mortgage of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, dated as of February 2, 1925.

Names and Addresses of Appellees' Attorneys of Record:

Sanford H. E. Freund,
55 Wall Street, New York City, New York,
Irving Herriott,
120 South La Salle Street, Chicago, Illinois,
Attorneys.

Shearman & Sterling,
55 Wall Street, New York City, New York,
Montgomery, Hart, Pritchard & Herriott,
120 South La Salle Street, Chicago, Illinois,
Of Counsel.

Dated this 9th day of January, 1941.

The National City Bank of New York and William W. Hoffman, as Trustees under the Adjustment Mortgage of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, dated as of February 2, 1925,
By Montgomery, Hart, Pritchard & Herriott,
Their Attorneys.

225 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

CERTIFICATE OF MAILING.

I, Hoyt King, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 12th day of December, A. D. 1940, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

To:

Shulman, Shulman & Abrams, 134 North LaSalle Street, Chicago, Illinois.
Winston, Strawn & Shaw, 38 South Dearborn Street, Chicago, Illinois.
Tenney, Harding, Sherman & Rogers, 120 South LaSalle St., Chicago, Illinois.
Sabath, Perlman, Goodman & Rein, 10 South LaSalle St., Chicago, Illinois.
Montgomery, Hart, Pritchard & Herriott, 120 So. LaSalle St., Chicago, Illinois.
McDonald & Richmond, 7 South Dearborn Street, Chicago, Illinois.
Sidley, McPherson, Austin & Burgess, 11 So. LaSalle St., Chicago, Illinois.
D'Ancona, Pflaum & Kohlsaat, 33 North LaSalle Street, Chicago, Illinois.
Poppenhusen, Johnston, Thompson & Raymond, 11 So. LaSalle St., Chicago, Illinois.
Charles W. Paltzer, 111 West Washington Street, Chicago, Illinois.
Malcolm Mecartney, 1 North LaSalle Street, Chicago, Illinois.
Lee Walker, 164 West Jackson Boulevard, Chicago, Illinois.
Nicholson, Snyder, Chadwell & Fagerburg, 135 So. LaSalle St., Chicago, Illinois.

Bell, Boyd & Marshall, 135 South LaSalle Street, Chicago, Illinois.

226 Pope & Ballard, 120 So. LaSalle Street, Chicago, Illinois.

West & Eckhart and William A. McSwaine, 38 So. Dearborn St., Chicago, Illinois.

Jesse L. Cook, 33 No. LaSalle Street, Chicago, Illinois.

John A. Sheean, 208 South LaSalle St., Chicago, Illinois.

W. F. Peter, General Solicitor, C. R. I. & P. Ry. Co., LaSalle Street Station, Chicago, Illinois.

S. C. Murray, New York Central R. R., Chicago, Illinois.

Cassels, Potter & Bentley, 209 So. LaSalle Street, Chicago, Illinois.

Gann, Secord, Stead & McIntosh, 135 So. LaSalle Street, Chicago, Illinois.

Mayer, Meyer, Austrian & Platt, 231 South LaSalle St., Chicago, Illinois.

Scott, MacLeish & Falk, 134 South LaSalle Street, Chicago, Illinois.

Theodore Schmidt and M. J. Haberkorn, Attys. for Pennsylvania Railroad, Union Station, Chicago, Ill.

A. N. Whitlock and C. S. Jefferson, 888 Union Station Bldg., Chicago, Illinois.

Hoyt King,
Hoyt King,
(Seal) *Clerk.*

93 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

CERTIFICATE OF MAILING.

I, Hoyt King, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 13th day of December, A. D. 1940, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I did

cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

Wilson & McIlvaine, 120 West Adams Street, Chicago, Illinois.

Winston, Strawn & Shaw, 1400 First National Bank Building, Chicago, Illinois.

Tenney, Harding, Sherman & Rogers, 120 S. La Salle Street, Chicago, Illinois.

Shulman, Shulman & Abrams, 134 N. La Salle Street, Chicago, Illinois.

Montgomery, Hart, Pritchard & Henriott, 120 S. La Salle Street, Chicago, Illinois.

McDonald & Richmond, 7 S. Dearborn Street, Chicago, Illinois.

Sidley, McPherson, Austin & Burgess, 11 S. La Salle Street, Chicago, Illinois.

D'Ancona, Pflaum & Kohlsaat, 33 N. La Salle Street, Chicago, Illinois.

Poppenhusen, Johnston, Thompson & Raymond, 11 S. La Salle Street, Chicago, Illinois.

Charles W. Paltzer, 111 W. Washington Street, Chicago, Illinois.

Malcolm Mecartney, 1 North La Salle Street, Chicago, Illinois.

Lee Walker, 164 W. Jackson Boulevard, Chicago, Illinois.

A. N. Whitlock and C. S. Jefferson, 888 Union Station Building, Chicago, Illinois.

Belk, Boyd & Marshall, 135 South La Salle Street, Chicago, Illinois.

Pope & Ballard, 120 South La Salle Street, Chicago, Illinois.

West & Eckhart, 38 South Dearborn Street, Chicago, Illinois.

Cassels, Potter & Bentley, 209 S. La Salle Street, Chicago, Illinois.

Gamm, Secord, Stead & McIntosh, 120 South La Salle Street, Chicago, Illinois.

Mayer, Meyer, Austrian & Platt, 231 South La Salle Street, Chicago, Illinois.

W. F. Peter, La Salle Street Station, S. La Salle St. and W. Van Buren, Chicago, Illinois.

Hoyt King,
Hoyt King,
Clerk.

(Seal)

81 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

CERTIFICATE OF MAILING.

I, Hoyt King, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 14th day of December, 1940, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

A. N. Whitlock and C. S. Jefferson, 888 Union Station, Chicago.
Shulman, Shulman & Abrams, 134 N. LaSalle Street, Chicago.
Winston, Strawn & Shaw, 38 S. Dearborn Street, Chicago.
Tenney, Harding, Sherman & Rogers, 120 S. LaSalle Street, Chicago.
Sabath, Perlman, Goodman & Rein, 10 S. LaSalle Street, Chicago.
Montgomery, Hart, Pritchard & Herriott, 120 S. LaSalle Street, Chicago.
McDonald & Richmond, 7 S. Dearborn Street, Chicago.
Sidley, McPherson, Austin & Burgess, 11 S. LaSalle Street, Chicago.
D'Ancona, Pflaum & Kohlsaat, 33 N. LaSalle Street, Chicago.
Poppenhusen, Johnston, Thompson & Raymond, 11 S. LaSalle Street, Chicago.
Charles W. Paltzer, 111 W. Washington Street, Chicago.
Malcolm Mecartney, 1 N. LaSalle Street, Chicago.
Lee Walker, 164 W. Jackson Blvd., Chicago.
Nicholson, Snyder, Chadwell & Fagerburg, 135 S. LaSalle Street, Chicago.
Bell, Boyd & Marshall, 135 S. LaSalle Street, Chicago.
Pope & Ballard, 120 S. LaSalle Street, Chicago.

West & Eckhart and Wm. A. McSwaine, 38 S. Dearborn Street, Chicago.
Jesse L. Cook, 33 N. LaSalle Street, Chicago.
John A. Sheean, 208 S. LaSalle Street, Chicago.
W. F. Peter, C. R. I. & P. Ry. Co., LaSalle Street Station, Chicago.
S. C. Murray, New York Central Railroad, Chicago.
Cassels, Potter & Bentley, 209 S. LaSalle Street, Chicago.
Gann, Secord, Stead & McIntosh, 135 S. LaSalle Street, Chicago.
Mayer, Meyer, Austrian & Platt, 231 S. LaSalle Street, Chicago.
Wilson & McIlvaine, 120 West Adams Street, Chicago.
Theodore Schmidt and M. J. Haberkorn, Pennsylvania Railroad, Union Station, Chicago.

Hoyt King,
Hoyt King,
(Seal) *Clerk.*

111 In the District Court of the United States,

For the Northern District of Illinois,

Eastern Division.

CERTIFICATE OF MAILING.

I, Hoyt King, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 14th day of December, 1940, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

Wilson & McIlvaine, 120 West Adams Street, Chicago, Illinois.
Winston, Strawn & Shaw, 1400 First National Bank Bldg., Chicago, Illinois.
Sabath, Perlman, Goodman & Rein, 10 South La Salle Street, Chicago, Illinois.
Montgomery, Hart, Pritchard & Herriott, 120 South La Salle Street, Chicago, Illinois.

McDonald & Richmond, 7 South Dearborn Street, Chicago, Illinois.
Sidley, McPherson, Austin & Burgess, 11 South La Salle Street, Chicago, Illinois.
D'Ancona, Pflaum & Kohlsaat, 33 North La Salle Street, Chicago, Illinois.
Poppenhusen, Johnston, Thompson & Raymond, 11 South La Salle Street, Chicago, Illinois.
Mr. Charles W. Paltzer, 111 West Washington Street, Chicago, Illinois.
Mr. Malcolm Mccartney, 1 North La Salle Street, Chicago, Illinois.
Mr. Lee Walker, 164 West Jackson Boulevard, Chicago, Illinois.
Nicholson, Snyder, Chadwell & Fagerburt, 135 South La Salle Street, Chicago, Illinois.
Bell, Boyd and Marshall, 135 South La Salle Street, Chicago, Illinois.
Pope & Ballard, 120 South La Salle Street, Chicago, Illinois.
West & Eckhart and Wm. A. McSwaine, 38 South Dearborn Street, Chicago, Illinois.
Shulman, Shulman & Abrams, 134 North La Salle Street, Chicago, Illinois.
112 John A. Sheean, 208 South La Salle Street, Chicago, Illinois.
W. E. Peter, La Salle Street Station, Chicago, Illinois.
S. C. Murray, General Counsel, New York Central Railroad, Chicago, Illinois.
Cassels, Potter & Bentley, 209 South La Salle Street, Chicago, Illinois.
Gann, Secord, Stead & McIntosh, 135 South La Salle Street, Chicago, Illinois.
Mayer, Meyer, Austrian & Platt, 231 South La Salle Street, Chicago, Illinois.
Scott, MacLeish & Falk, 134 South La Salle Street, Chicago, Illinois.
Theodore Schmidt and M. J. Haberkorn, Attorneys for Pennsylvania Railroad, Chicago, Illinois.
A. N. Whitlock and C. S. Jefferson, 888 Union Station Building, Chicago, Illinois.

Hoyt King,
Hoyt King,
(Seal) *Clerk.*

240 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

CERTIFICATE OF MAILING.

I, Hoyt King, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 15th day of December, A. D. 1940, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

To:

A. N. Whitlock and C. S. Jefferson, 888 Union Station, Chicago, Illinois.
Wilson & McIlvaine, 120 W. Adams Street, Chicago, Illinois.
Wright, Gordon, Zachry & Parlin, 63 Wall Street, New York City.
Davis, Polk, Wardwell, Gardiner & Reed, 15 Broad Street, New York City.
D'Ancona, Pflaum & Kohlsaat, 33 N. LaSalle Street, Chicago, Illinois.
Montgomery, Hart, Pritchard & Herriott, 120 S. LaSalle Street, Chicago, Illinois.
Mitchell, Taylor, Capron & Marsh, 20 Exchange Place, New York City.
Winston, Strawn & Shaw, 38 S. Dearborn Street, Chicago, Illinois.
Sabath, Perlman, Goodman & Rein, 10 S. LaSalle Street, Chicago, Ill.
Sidley, McPherson, Austin & Burgess, 11 S. LaSalle Street, Chicago, Illinois.
Shulman, Shulman & Abrams, 134 N. LaSalle Street, Chicago, Illinois.
Poppenhusen, Johnston, Thompson & Raymond, 11 S. LaSalle Street, Chicago, Illinois.
Stewart & Shearer, 45 Wall Street, New York City.
Shearman & Sterling, 55 Wall Street, New York City.

Bell, Boyd & Marshall, 135 S. LaSalle Street, Chicago, Illinois.
Hunt, Hill & Betts, 120 Broadway, New York City.
McDonald & Richmond, 7 So. Dearborn Street, Chicago, Illinois:
Oliver & Donnally, 110 East 42nd Street, New York City.
Mr. Jack E. Bagon, 475 Fifth Avenue, New York City.
Mr. Frederick J. Moses, 70 Pine Street, New York City.
Mr. Charles W. Paltzer, 111 W. Washington St., Chicago, Illinois.
Mr. Malcolm Mecartney, 1 N. LaSalle Street, Chicago, Illinois.
Barnes, Myers & Price, 1601 Morris Building, Philadelphia, Pa.
Mr. A. Marvin Braverman, Counsel, Reconstruction Finance Corporation, Washington, D. C.
241 Hodges, Reavis, Pantaleoni & Downey, 20 Pine Street, New York City.
Gann, Secord, Stead & McIntosh, 135 S. LaSalle Street, Chicago, Illinois:
Ernest S. Ballard and Minier Sargent, 120 S. LaSalle Street, Chicago, Illinois.
Mr. Julius Weiss, 122 East 42nd Street, New York City.
Girard Trust Company, Broad & Chestnut Sts., Philadelphia, Pa.
Cassels, Potter & Bentley, 209 S. LaSalle Street, Chicago, Illinois.

Hoyt King,
Hoyt King,
Clerk.

(Seal)

325 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

CERTIFICATE OF MAILING.

I, Hoyt King, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 16th day of December, 1940, in accord-

ance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

Shulman, Shulman & Abrams, 134 North La Salle St., Chicago, Illinois.

Winston, Strawn & Shaw, 38 So. Dearborn St., Chicago, Illinois.

Sabath, Perlman, Goodman & Rein, 10 So. La Salle St., Chicago, Illinois.

Montgomery, Hart, Pritchard & Herriott, 120 So. La Salle St., Chicago, Ill.

D'Ancona, Pflaum & Kohlsaat, 33 North La Salle St., Chicago, Illinois.

Charles W. Paltzer, 111 West Washington St., Chicago, Illinois.

Nicholson, Chadwell & Fagerburg, 135 So. La Salle St., Chicago, Illinois.

Pope & Ballard, 120 So. La Salle St., Chicago, Illinois.

Jesse L. Cook, 33 N. La Salle St., Chicago, Illinois.

W. F. Peter, Gen. Sol'r., C. R. I. & P. Ry. Co., La Salle Street Station, Chicago, Illinois.

Cassels, Potter & Bentley, 209 So. La Salle St., Chicago, Illinois.

Mayer, Meyer, Austrian & Platt, 231 So. LaSalle St., Chicago, Illinois.

Theodore Schmidt and M. J. Haberkorn, Attys. for Pennsylvania Railroad, Union Station, Chicago, Illinois.

Gardner, Carton & Douglas, 33 So. Clark St., Chicago, Illinois.

Wilson & McIlvaine, 120 West Adams St., Chicago, Illinois.

Tenney, Harding, Sherman & Rogers, 120 So. La Salle St., Chicago, Illinois.

McDonald & Richmond, 7 So. Dearborn St., Chicago, Illinois.

Sidley, McPherson, Austin & Burgess, 11 So. La Salle St., Chicago, Illinois.

Poppenhusen, Johnston, Thompson & Raymond, 11 So. La Salle St., Chicago, Illinois.

Lee Walker, 164 West Jackson Blvd., Chicago, Illinois.

Bell, Boyd & Marshall, 135 So. La Salle St., Chicago, Illinois.

West & Eckhart and Wm. A. McSwain, 38 So. Dearborn St., Chicago, Illinois.
John A. Sheean, 208 So. LaSalle St., Chicago, Illinois.
S. C. Murray, General Counsel New York Central Railroad, Chicago, Illinois.
Gann, Secord, Stead & McIntosh, 135 So. La Salle St., Chicago, Illinois.
Scott, MacLeish & Falk, 134 So. La Salle St., Chicago, Illinois.
A. N. Whitlock and C. S. Jefferson, 888 Union Station, Chicago, Illinois.
326 Guggenheimer & Untermyer, 30 Pine St., New York, N. Y.
Jack E. Bagon, 475 Fifth Ave., New York, N. Y.
Hunt, Hill & Betts, 120 Broadway, New York, N. Y.
Pierce & Greer, 40 Wall St., New York, N. Y.
Barnes, Myers & Price, 1601 Morris Bldg., Philadelphia, Pa.
Julius Weiss, 122 East 42nd St., New York, N. Y.
C. M. Clay, Asst. General Counsel, Reconstruction Finance Corporation, Washington, D. C.
Cravath, DeGersdorff, Swaine & Wood, 15 Broad St., New York, N. Y.
Carmody, Roth and Mayer, 67 Broad St., New York, N. Y.
Thomas F. Murphy, 41 Broad St., New York, N. Y.
Frederick J. Moses, 70 Pine St., New York, N. Y.
Shearman & Sterling, 55 Wall St., New York, N. Y.
Mitchell, Taylor, Capron & Marsh, 20 Exchange Place, New York, N. Y.
Oliver & Donally, 110 East 42nd St., New York, N. Y.
Bryan, Williams, Cave & McPheeters, 314 North Broadway, St. Louis, Missouri.
Davis, Polk, Wardwell, Gardiner & Reed, 15 Broad St., New York, N. Y.
Wright, Gordon, Zachry & Parlin, 63 Wall St., New York, N. Y.
Stewart & Shearer, 45 Wall St., New York, N. Y.
Carter, Ledyard & Milburn, 2 Wall St., New York, N. Y.
McCready Sykes, 45 Wall St., New York, N. Y.

Hoyt King,
Hoyt King,
(Seal) *Clerk.*

101 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

CERTIFICATE OF MAILING.

I, Hoyt King, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 18th day of December, 1940, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

Hoyt King,
Hoyt King,
Clerk.

(Seal)

Filed Dec. 13, 1940.

94 And on, to wit, the 13th day of December, A. D. 1940, came Israel A. Abrams, et al., by their attorneys and filed in the Clerk's office of said Court their certain Additional Designation of Record, in words and figures following, to wit:

95 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

ADDITIONAL DESIGNATION OF THE RECORD ON APPEAL.

To the Clerk of the District Court:

Pursuant to Rule 75(k), appellants, Israel A. Abrams, et al., file their Additional Designation of the Record on Appeal, to consist of the following:

1. These appellants adopt Items Numbered 19, 34 and 38 from the Designation of the Record on Appeal filed on December 13, 1940, by West & Eckhart and William A. McSwain, attorneys for Chicago, Terre Haute and Southeastern Railway Company, et al.

2. Notice of Appeal filed December 13, 1940, by these appellants.

3. Statement of Points filed by these appellants on December 18, 1940.

4. Objections to the Report of the Interstate Commerce Commission as modified by these appellants.

5. Additional Designation of Record on Appeal filed by these appellants December 18, 1940, together with Proof of Service.

Dated at Chicago, Illinois, this 18th day of December, A. D. 1940.

Meyer Abrams,
Meyer Abrams,
Attorney for Israël A. Abrams, et al., Appellants.

82 And on, to wit, the 13th day of January, A. D. 1941, came the St. Louis Union Trust Co., and Illinois State Trust Co., et al., by their attorneys and filed in the Clerk's office of said Court their certain Designation of Additional Portions of the Record, in words and figures following, to wit: Filed Jan. 13, 1941.

83 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60453)

DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE, TO BE INCLUDED IN THE RECORD ON APPEAL.

To the Clerk of said Court:

You are hereby requested, pursuant to Rule 75(a) of the Rules of Civil Procedure for the District Courts of the United States, to include in the record on appeal designated in the "Designation of Contents of Record on Appeal from Order Approving Plan of Reorganization," filed herein on December 18, 1940, by Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor and Appellant, and also designated in the several Designations of Additional Portions of the Record on Appeal filed herein by Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of the said Debtor, the following additional portions of the record, proceedings and evidence:

1. Notice of Appeal to Circuit Court of Appeals of St.

Louis Union Trust Company and Illinois State Trust Company, as Trustee, Tower Grove Bank & Trust Company, St. Louis Realty & Securities Company and Loraine G. Franciscus, filed herein on December 13, 1940.

2. Statement of Points on Appeal from Order and Decree Approving Plan of Reorganization of St. Louis Union Trust Company and Illinois State Trust Company, as Trustees, Tower Grove Bank & Trust Company, St. Louis Realty & Securities Company and Loraine G. Franciscus, filed herein on January 13, 1941.

84 3. This Designation of Additional Portions of the Record, Proceedings and Evidence to be Included in the Record on Appeal.

Dated: January 13, 1941.

St. Louis Union Trust Company and Illinois State Trust Company, as Trustees, Tower Grove Bank & Trust Company, St. Louis Realty & Securities Company Loraine G. Franciscus,

By Robert H. McRoberts,

Robert H. McRoberts,
1630 Boatmen's Bank Building,
St. Louis, Missouri,
Their Attorney.

Certificate of Service.

I hereby certify that I have this day served the foregoing Designation of Additional Portions of the Record, Proceedings and Evidence to be Included in the Record on Appeal upon all parties of record in this proceeding, by mailing a copy thereof, properly addressed, to each party of record.

Dated at St. Louis, Missouri, this 13th day of January, 1941.

Robert H. McRoberts,
Counsel for St. Louis Union Trust Company and Illinois State Trust Company, as Trustees, Tower Grove Bank & Trust Comany, St. Louis Realty & Securities Company and Loraine G. Franciscus.

278 And on, to wit, the 24th day of December, A. D. 1940, came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Designation of Additional Portions of the Record, Proceedings and Evidence to be Included in the Record on Appeal, in words and figures, following, to wit: Filed Dec. 24, 1940.

279 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE INCLUDED IN THE RECORD ON APPEAL.

To the Clerk of said Court:

You are hereby requested, pursuant to Rule 75 of the Rules of Civil Procedure for the District Courts of the United States to include in the record on appeal in the above entitled proceeding, notice of which appeal has heretofore been filed in behalf of Israel A. Abrams, et al., appellants, the following additional portions of the record, proceedings and evidence in addition to the portions designated by said appellants in their designation filed herein on December 18, 1940:

1. Reporters' transcript of all of the testimony given and of the proceedings had and all of the exhibits introduced at the hearing on the Modified Plan before the District Court September 4, 1940 to September 13, 1940, both inclusive.

2. Reporters' transcript of the proceedings had in open Court on November 13, 1940 at the time the order and decree approving the Modified Plan was made.

3. Minute entry dated November 13, 1940, overruling all objections to the Proposed Findings of Fact, Conclusions of Law and Order and Decree approving the Modified Plan of Reorganization.

4. This Designation of Additional Portions of the Record on Appeal together with Proof of Service.

280 You are requested to certify the foregoing additional portions of the record to the United States Circuit

Court of Appeals for the Seventh Circuit, within the time allowed by law.

A. N. Whitlock and
C. S. Jefferson,
Attorneys for Henry A. Scandrett, Walter J. Cummings, and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Appellee.

Filed Dec. 26, 1940.

333 And on, to wit, the 26th day of December, A. D. 1940, came the Holder of Fifty Year Five Per Cent Mortgage Bonds by their attorneys and filed in the Clerk's office of said Court their certain Designation of Record on Appeal, in words and figures following, to wit:

334 In the District Court of the United States.

* * (Caption—60463) * *

DESIGNATION OF CONTENTS OF RECORD ON APPEAL OF PROTECTIVE COMMITTEE FOR THE HOLDERS OF 50-YEAR FIVE PER CENT MORTGAGE GOLD BONDS, SERIES A, DUE FEBRUARY 1, 1975, FROM ORDER APPROVING PLAN OF REORGANIZATION.

To the Honorable Hoyt King: Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division:

You are hereby requested, pursuant to Rule 75(a) of the Rules of Civil Procedure for the District Courts of the United States; to include in the record on appeal of the Protective Committee for the Holders of 50-Year Five Per Cent Mortgage Gold Bonds, Series A, due February 1, 1975, the following:

1. Debtor's petition for Order No. 1 and Exhibit A attached thereto, filed July 29, 1935.

2. Order No. 1, approving petition as properly filed, entered June 29, 1935.

3. Order No. 2, fixing date for filing claims and dividing claims into classes, entered July 6, 1935.

4. Petition of Fifty Year Mortgage Trustees for Order granting leave to intervene.

5. Petition of Protective Committee for the Holders of 50-Year Five Per Cent Mortgage Gold Bonds, Series A, due February 1, 1975, for Order granting leave to intervene.

335 6. Order No. 18.

7. Order dated December 6, 1938, of the Interstate Commerce Commission granting the Protective Committee for the Holders of 50-Year Five Per Cent Mortgage Gold Bonds, Series A, due February 1, 1975, leave to intervene before the Interstate Commerce Commission.

8. Petition of Protective Committee for the Holders of 50-Year Five Per Cent Mortgage Gold Bonds, Series A, due February 1, 1975, for Order granting leave to intervene in proceedings before the District Court of the United States for the Northern District of Illinois, Eastern Division.

9. Order dated May 3, 1940, of District Court of the United States for the Northern District of Illinois, Eastern Division, granting the Protective Committee for the Holders of 50-Year Five Per Cent Mortgage Gold Bonds, Series A, due February 1, 1975, leave to intervene.

10. Petition of Fifty Year Mortgage Trustees for intervention and for impounding of income.

11. Order No. 18A.

12. Order No. 22, extending time for filing claims.

13. Verified statement made by Guaranty Trust Company of New York, as Corporate Trustee, pursuant to the provisions of subdivision (a) of paragraph Second of Order No. 2.

14. Report of the Interstate Commerce Commission in Finance Docket No. 10882, issued February 12, 1940, filed February 29, 1940.

15. Supplemental report of Interstate Commerce Commission in Finance Docket No. 10882, issued June 4, 1940, filed June 14, 1940.

16. Supplemental order of Interstate Commerce Com-
336 mission in Finance Docket No. 10882, issued June 4, 1940, filed June 14, 1940.

17. Order No. 680, fixing time within which objections to the plan may be filed, entered June 21, 1940.

18. Objections and claims for equitable treatment of Fifty Year Mortgage Trustees, filed August 1, 1940.

19. Objections and claims for equitable treatment of

Protective Committee for the Holders of 50-Year Five Per Cent Mortgage Gold Bonds, Series A, due February 1, 1975, filed August 1, 1940.

20. Exhibits 27, 34, 35 and 36 introduced at the hearing before the Court in September of 1940.

21. Memorandum of Judge Igoe approving the plan as certified by the Commission, filed October 21, 1940.

22. Objections and memorandum of Fifty Year Mortgage Trustees to proposed findings of fact, conclusions of law, order and decree, filed November 12, 1940.

23. Objections and memorandum of Protective Committee for the Holders of 50-Year Five Per Cent Mortgage Gold Bonds, Series A, due February 1, 1975, to proposed findings of fact, conclusions of law, order and decree, filed August 1, 1940.

24. Findings of fact, conclusions of law, order and decree approving plan of reorganization, entered by the Court on November 13, 1940.

25. Proof of notice given parties of entry of decree, filed November 18, 1940.

26. Notice of Appeal of Fifty Year Mortgage Trustees, filed December 13, 1940, together with proof of service.

27. Notice of Appeal of Protective Committee for the Holders of 50-Year Five Per Cent Mortgage Gold Bonds, Series A, due February 1, 1975, filed December 14, 1940, together with proof of service.

337 28. Bond on Appeal, filed by Fifty Year Mortgage Trustees.

29. Bond on Appeal filed by Protective Committee for the Holders of 50-Year Five Per Cent Mortgage Gold Bonds, Series A, due February 1, 1975.

30. Statement of Points on Appeal of Fifty Year Mortgage Trustees, filed December 16, 1940, together with proof of service.

31. Statement of Points on Appeal of Protective Committee for the Holders of 50-Year Five Per Cent Mortgage Gold Bonds, Series A, due February 1, 1975, filed December 14, 1940, together with proof of service.

32. This Amended Designation of Record, together with proof of service.

33. The following pages of the stenographic minutes of the testimony before the Interstate Commerce Commission in the record certified by the Commission to the Court: 15-25, 30-2, 37-8, 383-5, 400, 468, 517, 538, 573-4, 577, 580, 600-8, 642-3, 676-8, 694-8, 700-2, 712-3, 760-73, 778, 781,

794-6, 804, 818-21, 827, 925, 935-8, 986, 1037-40, 1044, 1052, 1057-69, 1082, 1103-12, 1128, 1132-5, 1151-9, 1167-73, 1270-1, 1281-5, 1299-1307, 1341-1410, 1421, 1431-5, 1441-2, 1446, 1466-80, 1518-29, 1535-1608, 1611-14, 1629-32, 1652-3, 1657-60, 1664, 6443, 7405.

34. The following exhibits in the record certified by the Commission to the Court: 2, 27 (Mortgage and Deed of Trust dated as of February 2, 1925, of Debtor to Guaranty Trust Company of New York and Merrel P. Callaway as Trustees. The parts of said mortgage essential to the decision of the questions presented by this appeal and hereby designated to be certified and included in the record, are as follows: Beginning on page 20 of the printed copy thereof, with the words "Now, Therefore, This Indenture Witnesseth", through the Granting Clauses, and to Article One on page 54.) 29, 73, 76, 77, 91, 93, 96, 120, 139, 141, 143, 145, 146, 149, 150, 173, 175, 177, 179, 181, 188, 189, 194-198, 204, 215, 216, 217, 218.

35. Report of Bureau of Valuation of Interstate Commerce Commission as of December 31, 1935, pages 2 (table of mileage statistics for Debtor), 3 and 4 (table of elements of value for Debtor, with notes) and 9 (elements of value and mileages for Fifty Year Mortgage).

36. Intervention petition of Fifty Year Mortgage Trustees, dated August 5, 1935, in proceeding before Interstate Commerce Commission.

37. Petition and Memorandum of Fifty Year Mortgage Trustees, dated April 11, 1940, for modification of report and Order of the Commission decided February 12, 1940.

Dated: January 24, 1941.

Hodges, Reavis, Pantaleoni & Downey,
By Guido Pantaleoni, Jr.,
Guido Pantaleoni, Jr.,
a member of said firm,
20 Pine Street,
New York, New York.

Malcolm Mecartney,
Malcolm Mecartney,
1 North La Salle Street,
Chicago, Illinois,

Attorneys for Protective Committee for the Holders of 50-Year Five Per Cent Mortgage Gold Bonds, Series A, due February 1, 1975.

Filed Jan. 14, 1941.

286 And on, to wit, the 14th day of January, A. D. 1941, came the Debtor by its attorneys and filed in the Clerk's office of said Court its certain Amended Designation of Contents of Debtor's Record on Appeal from Order Approving Plan of Reorganization in words and figures following, to wit:

287 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

AMENDED DESIGNATION OF CONTENTS OF DEBTOR'S RECORD ON APPEAL FROM ORDER APPROVING PLAN OF REORGANIZATION.

To the Honorable Hoyt King: Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division:

You are hereby requested, pursuant to Rule 75(a) of the Rules of Civil Procedure for the District Courts of the United States, to include in the record on appeal the following:

1. Debtor's petition and all exhibits attached thereto, filed June 29, 1935.

2. Order approving petition as properly filed, entered June 29, 1935.

3. Petition for order respecting the filing of claims and division of creditors and stockholders into classes, filed July 5, 1935.

4. Order fixing date for filing claims and dividing claims into classes, and exhibits attached thereto, entered July 6, 1935.

5. Order fixing time and place of hearing and appointment of trustees, entered August 30, 1935.

6. Order appointing trustees, entered October 17, 1935.

7. Amended order appointing trustees, entered November 29, 1935.

8. Report of the Interstate Commerce Commission in Finance Docket No. 10882, issued February 12, 1940, filed February 29, 1940.

288 9. Order of the Interstate Commerce Commission in Finance Docket No. 10882, issued February 12, 1940, filed February 29, 1940.

10. Supplemental report of Interstate Commerce Com-

mission in Finance Docket No. 10882, issued June 4, 1940, filed June 14, 1940.

11. Supplemental order of Interstate Commerce Commission in Finance Docket No. 10882, issued June 4, 1940, filed June 14, 1940.

12 Order No. 680 fixing time within which objections to the plan may be filed, entered June 21, 1940.

13. Objections of the New York Central Railroad Company to modified plan of reorganization, filed July 19, 1940.

14. Objections for the St. Louis Union Trust Company and Illinois State Trust Company, as Trustees, for Chicago, Milwaukee and Gary Railway Company First Mortgage 5% 40-year Gold Bonds, Tower Grove Bank and Trust Company, St. Louis Realty & Securities Company and Loraine G. Franciscus to modified plan of reorganization approved by the Interstate Commerce Commission, filed July 27, 1940.

15. Objections of The Pennsylvania Railroad Company to modified plan of reorganization, filed July 29, 1940.

16. Objections of the Trustees to modified plan of reorganization, certified to this Court by the Interstate Commerce Commission, filed July 30, 1940.

17. Claim for equitable treatment and statement of position of Reconstruction Finance Corporation, filed July 30, 1940.

18. Objections of Charles B. Roberts, III, et al., constituting Terre Haute First Lien Bondholders Committee, to the modified plan of reorganization, filed July 31, 1940.

19. Objections of Israel A. Adams, et al., to the report of the Interstate Commerce Commission and supplemental report of June 4, 1940, pursuant to the order entered June 21, 1940, filed July 31, 1940.

20. Objections of the United States Trust Company of New York, under General Mortgage of Chicago, Milwaukee and St. Paul Railway Company to plan of reorganization, filed July 31, 1940.

289 21. Objections of Chicago, Terre Haute and Southeastern Railway Company to modified plan of reorganization and claim for equitable treatment, filed July 31, 1940.

22. Objections of Protective Committee for Preferred Stockholders to plan of reorganization approved by Interstate Commerce Commission and claims for equitable treatment, filed July 31, 1940.

23. Objections of the National City Bank of New York

and William W. Hoffman, as Trustees, to the plan of reorganization and claims of such Trustees for equitable treatment, filed July 31, 1940.

24. Memorandum of objections to and suggestions in respect of modified plan of reorganization and claim for equitable treatment filed pursuant to order of June 21, 1940, by Anglo-Continentale Treuhand, A. G., filed July 31, 1940.

25. Objections of Ida E. Herschensohn and Herbert L. Herschensohn, to the modified plan of reorganization, filed July 31, 1940.

26. Statement of position and claim for equitable treatment of the Executive Committee of Mutual Savings Bank, filed July 31, 1940.

27. Objections of Girard Trust Company, Substituted Trustee, to the modified plan, and claim for equitable treatment, filed August 1, 1940.

28. Objections of the Trustees of Princeton University, New York University, Robert Winthrop, as Trustee, Charles M. Wood, et al., to the plan of reorganization, filed August 1, 1940.

29. Objections of the Imperial Trust Company, Limited, et al., to the modified plan of reorganization, filed August 1, 1940.

30. Suggestions of Mercantile National Bank of Chicago and Benjamin H. Rubenzik to the modified plan of reorganization, and claim for equitable treatment, filed August 1, 1940.

31. Statement of joint and several objections of Massachusetts Mutual Life Insurance Company and The Prudential Insurance Company of America to the plan of reorganization, and claims for equitable treatment, and motion
290 that proceedings be referred back to the Interstate Commerce Commission, filed August 1, 1940.

32. Objections of Guaranty Trust Company of New York and Merrel P. Callaway, filed August 1, 1940.

33. Statement of position and claim for equitable treatment of Group of Institutional Investors, filed August 1, 1940.

34. Objections of the Debtor to the plan of reorganization certified to the Court by the Interstate Commerce Commission, and statement of its claim for equitable treatment, filed August 1, 1940.

35. Objections and suggestions of The First National

Bank of Chicago, as Trustee, with respect to the modified plan of reorganization, filed August 1, 1940.

36. Objections and claim for equitable treatment of E. Stanley Glines, et al., filed August 1, 1940.

37. Statement of position of City Bank Farmers Trust Company, as Trustee, filed August 1, 1940.

38. Objections of the Independent Committee for Protection of Chicago, Milwaukee, St. Paul and Pacific Railroad Company Bondholders, filed August 1, 1940.

39. Objections of Terre Haute Income Mortgage Bondholders Committee to modified plan, filed August 1, 1940.

40. Objections of Continental Illinois National Bank & Trust Company of Chicago, as Trustee, to modified plan, and claim for equitable treatment, filed August 1, 1940.

41. Order continuing hearing, etc., entered September 13, 1940.

42. Memorandum of Judge Igoe approving the plan as certified by the Commission, filed October 21, 1940.

43. Amended objections of Terre Haute Income Mortgage Bondholders Committee to the modified plan of reorganization and claim for equitable treatment, filed November 6, 1940.

44. Objections of Terre Haute First Lien Bondholders Committee to proposed findings of fact, etc., filed November 12, 1940.

45. Objections and Memorandum of Fifty Year Mortgage Trustees to proposed findings of fact, conclusions
291 of law and order, and decree, filed November 12, 1940.

46. Findings of Fact, Conclusions of Law and Order and Decree approving Plan of Reorganization entered by the Court November 13, 1940.

47. Proof of notice given to parties of entry of aforesaid decree, filed November 18, 1940.

48. Notice of appeal filed by the Debtor on December 14, 1940.

49. Bond on appeal filed by the Debtor on December 14, 1940.

50. Statement of points filed by the Debtor on December 14, 1940, together with proof of service of the same.

51. Order extending the time for filing the record on appeal and docketing the appeal, and providing for use of originals in transcript of record, entered January 8, 1941.

52. Order granting Debtor leave to file amended designation of portions of the record, entered January 14, 1941.

53. Amended designation of the portions of the record, proceedings, and evidence to be contained in the record on appeal, filed by the Debtor on January 14, 1941, together with proof of service of same.

54. Stenographer's transcript of the evidence taken before the District Court on September 4 to 9, inclusive, 1940, pages 1 to 609, inclusive, of said transcript, and Debtor's District Court Exhibits 5, 6, 8, 9, 10, 11 and 12, received in evidence on said hearing, omitting all arguments of counsel.

55. The following contents of the record certified to the District Court of the United States for the Northern District of Illinois, Eastern Division, by the Interstate Commerce Commission, and all filed with the said District Court on June 15, 1940:

Plan of reorganization filed with the Commission January 10, 1938.

Modified plan of reorganization filed with the Commission January 27, 1938.

Modifications suggested by the Debtor filed with the Commission January 28, 1938.

292 Order of the Commission entered June 23, 1936, directing the filing of accompanying report by the Bureau of Accounts, and said report.

Order of the Commission entered August 5, 1936, directing the filing of accompanying report by the Bureau of Valuation, and said report.

Order of the Commission entered November 14, 1936, directing the filing of accompanying report, and said report.

Order of the Commission entered April 24, 1937, directing the filing of accompanying exhibits, and said exhibits.

Order of the Commission dated June 15, 1937, directing the filing of accompanying report of the Bureau of Finance, and said report.

Petition of the Debtor filed September 13, 1937, requesting adjournment of further hearing.

Order of the Commission entered September 15, 1937, denying Debtor's petition.

Reporter's transcript of testimony before the Interstate Commerce Commission of hearings on plan, August 5, 1935, August 6, 1935, August 7, 1935, June 16, 1937, September 20, 1937, February 1, 1938, February 2, 1938, February 3, 1938, February 4, 1938, March 21, 1938, and March 22, 1938, being pages 1 through 1666, inclusive.

Exhibits 1 to 219, inclusive, filed before the Commission during said hearings on the plan.

And you are hereby further requested to certify the aforesaid record to the United States Circuit Court of Appeals for the Seventh Circuit within the time allowed by law, 293 in connection with the Notice of Appeal filed on December 14, 1940, by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor,

Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor,
By Pierce & Greer,
Attorneys for Debtor.

F. C. Nicodemus, Jr.,
F. C. Nicodemus, Jr.,
Pierce & Greer, 40 Wall St., New York,
A. Perry Osborn,
A. Perry Osborn,
Henry A. Gardner,
Henry A. Gardner,
Gardner, Carton & Douglas, First National Bank Building, Chicago, and
Helen W. Munsert,
Helen W. Munsert,
2106 Field Bldg., Chicago, Central 0204.
All of Counsel.

State of Illinois, }
County of Cook. } ss.

Helen W. Munsert, being first duly sworn, on oath deposes and says that she is associated with the firm of Pierce & Greer, attorneys for the Debtor herein, as associate counsel in these proceedings, and the duly authorized agent of the Debtor in this behalf; that she served the above and foregoing amended designation of the portions of the record, proceedings, and evidence to be contained in the record on appeal on the attorneys and firms of attorneys and other parties hereinafter set forth, by depositing in the United States Mails at Chicago, Illinois, at the hour of 5:30 P. M., January 10, 1941, in sealed envelopes with postage prepaid.

Helen W. Munsert.

Subscribed and sworn to before me this 10th day of January, 1941.

.....

Notary Public.

Leon M. Reiter, 314 W. 77th Street, New York, New York.
Mrs. Catherine Cornille, 4552 First Avenue, North, St. Petersburg, Fla.
Jeanette Bierhoff, 200 W. 70th Street, New York, New York.
Gardiner, Carton & Douglas, First National Bank Bldg., Chicago, Ill.
294 Theodore Schmidt and M. J. Haberkorn, Attorneys, The Pennsylvania Railroad, Union Station Bldg., Chicago, Ill.
Reese D. Alsop, 120 Broadway, New York, N. Y.
Guggenheimer & Untermyer, 30 Pine Street, New York, N. Y.
Jack E. Gagon, 475 Fifth Avenue, New York, N. Y.
A. L. Skolnik, 1147 Empire Bldg., 710 N. Plankinton, Ave., Milwaukee, Wisc.
F. C. Nicodemus, Jr., c/o Pierce & Greer, 40 Wall Street, New York, New York.
Oliver & Donnally, 110 E. 42nd Street, New York, N. Y.
Julius Weiss, 122 E. 42nd Street, New York, N. Y.
C. M. Clay, Ass't. Gen. Counsel, Reconstruction Finance Corporation, Washington, D. C.
Stewart & Shearer, 45 Wall Street, New York, N. Y.
H. E. Byram, 54 Wall Street, New York, N. Y.
Lawrence Richardson, c/o Mitchell, Taylor, Capron & Marsh, 20 Exchange Place, New York, N. Y.
Carmody, Roth and Mayer, 67 Broad Street, New York, N. Y.
American Trust Company, 464 California Street, San Francisco, Cal.
Edwin S. S. Sunderland and Thos. O. G Fitzgibbon, c/o Davis, Polk, Wardwell, Gardiner & Reed, 15 Broad Street, New York, N. Y.
Hunt, Hill & Betts, 120 Broadway, New York, N. Y.
Barnes, Myers, & Price, 1601 Morris Bldg., Philadelphia, Pa.
Frederick J. Moses, 70 Pine Street, New York, N. Y.

Shearman & Sterling, 55 Wall Street, New York, N. Y.
Mitchel, Taylor, Capron & Marsh, 20 Exchange Place, New York, N. Y.
Hodges, Reavis, Pantaleoni & Downy, 20 Pine Street, New York, N. Y.
R. H. McRoberts, c/o Bryan, Williams, Cave & McPheeters, 314 N. Broadway, St. Louis, Mo.
Davis, Polk, Wardwell, Gardiner & Reed, 15 Broad Street, New York, N. Y.
Wright, Gordon, Zachry & Parlin, 63 Wall Street, New York, N. Y.
Victor Greiff, 173 Beach 139th Street, Belle Harbor, Long Island, N. Y.
Samuel W. McIntosh, National Press Bldg., Wasington, D. C.
Carter, Ledyard & Milburn, 2 Wall Street, New York, N. Y.
Union Labor Life Insurance Company, Matthew Woll, President, 570 Lexington Avenue, New York.
McCready Sykes, 45 Wall Street, New York, N. Y.
Thomas F. Murphy, 41 Broad Street, New York, N. Y.
C. W. Crispell, 986 E. Avenue, Bay Head, N. J.
295 A. N. Whitlock and C. S. Jefferson, 888 Union Station, Chicago, Ill.
West & Eckhart and Wm. A. McSwain, 38 S. Dearborn Street, Chicago, Ill.
Bell, Boyd and Marshall, 135 S. LaSalle Street, Chicago, Ill.
W. F. Peter, LaSalle Street Station, Chicago, Ill.
Mayer, Meyer, Austrian & Platt, 231 S. LaSalle Street, Chicago, Ill.
Winston, Strawn & Shaw, 1400 First National Bank Bldg., Chicago, Ill.
Sabath, Perlman, Goodman & Rein, 10 S LaSalle Street, Chicago, Ill.
McDonald & Richmond, 7 South Dearborn Street, Chicago, Ill.
D'Ancona, Pflaum & Kohlsaat, 33 N. LaSalle Street, Chicago, Ill.
Charles W. Paltzer, 111 W. Washington Street, Chicago, Ill.
Lee Walker, 164 W. Jackson Blvd., Chicago, Ill.
Jesse L. Cook, 33 N. LaSalle Street, Chicago, Ill.

S. C. Murray, General Counsel, New York Central Railroad, Chicago, Ill.
Wilson & McIlvaine, 120 W. Adams Street, Chicago, Ill.
Gann, Secord, Stead & McIntosh, 135 S. LaSalle Street, Chicago, Ill.
E. S. Ballard and Minier Sargent, 120 S. LaSalle Street, Chicago, Ill.
Cassells, Potter & Bentley, 209 S. LaSalle Street, Chicago, Ill.
Shulman, Shulman & Abrams, 134 N. La Salle Street, Chicago, Ill.
Tenney, Harding, Sherman & Rogers, 120 S. LaSalle Street, Chicago, Ill.
Montgomery, Hart, Pritchard & Herritt, 120 S. LaSalle Street, Chicago, Ill.
Sidley, McPherson, Austin & Burgess, 11 S. LaSalle Street, Chicago, Ill.
Poppenhusen, Johnston, Thompson & Raymond, 11 S. LaSalle Street, Chicago, Ill.
Malcolm Mecartney, 1 N. La Salle Street, Chicago, Ill.
Nicholson, Snyder, Chadwell & Fagerburg, 135 S. LaSalle Street, Chicago, Ill.
John A. Sheean, 208 S. LaSalle Street, Chicago, Ill.
Scott, MacLeish & Falk, 134 S. LaSalle Street, Chicago, Ill.

296 And on, to wit, the 23rd day of January, A. D. 1941, came the Group of Institutional Investors, Holders of Securities of the Debtor, by their attorneys and filed in the Clerk's office of said Court their certain Designation of Additional Portions of Record, Proceedings and Evidence to Be Included in the Record on Appeal in words and figures following, to wit:

297 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Jan. 28, 1941.

(Caption—60463)

DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE INCLUDED IN THE RECORD ON APPEAL.

To the Clerk of said Court:

You are hereby requested, pursuant to Rule 75 of the Rules of Civil Procedure for the District Courts of the United States, to include in the record on appeal from the Order and Decree Approving Modified Plan of Reorganization in the above entitled proceeding, notice of which appeal has been filed by the Debtor, the following additional portions of the record, proceedings and evidence in addition to the portions designated by the Debtor, as Appellant, in its Amended Designation of Contents of Debtor's Record on Appeal, heretofore filed herein:

1. All exhibits introduced in evidence at the hearing before the District Court on September 4th to 13th, inclusive, 1940. This designation includes the exhibits listed in paragraph No. 54 of Debtor's Amended Designation, it being intended hereby to request, in addition to the exhibits so designated, all additional exhibits introduced at said hearing.

2. Reporters transcript of the proceedings had in open Court on November 13, 1940, at the time the order and decree approving the Modified Plan was made.

3. Petition of Trustees with reference to allowance for certain purposes of certain claims,—filed September 12, 1940.

298 4. Order with reference to the allowance of certain claims for certain purposes,—filed and entered September 12, 1940.

5. Order authorizing Trustees to enter into conditional sales contract for the purchase of six Diesel Switching Locomotives,—entered March 31, 1939.

6. Order amending order of March 31, 1939, relating to conditional sales contracts for the purchase of six Diesel Switching Locomotives,—entered April 14, 1939.

7. Order authorizing Trustees to enter into conditional sales contract for the purchase of one Diesel Switching Locomotive,—entered July 28, 1939.

8. Order authorizing Trustees to enter into conditional sale agreements for the purchase of 18 Diesel Switching Locomotives, entered March 15, 1940.

9. Order authorizing conditional sale agreements for the purchase of 18 Diesel Switching Locomotives, entered September 3, 1940.

10. Order entered November 13, 1940, that the memorandum of objections to the Modified Plan filed by Anglo-Continentale Treuhand, A. G. standing as objections to the Proposed Findings of Fact, Conclusions of Law and Order and Decree, approving the Modified Plan of Reorganization.

11. Minute entry dated November 13, 1940, overruling all objections to the Proposed Findings of Fact, Conclusions of Law and Order and Decree approving the Modified Plan of Reorganization.

12. Petition of Trustees for approval of Improvement Budget for year 1937, filed January 21, 1937.

13. Order No. 194 approving Improvement Budget for year 1937, entered January 21, 1937.

14. Petition for approval of expenditures for additions and betterments during the last half of the year 1937, 299 which petition was filed June 29, 1937, and Order No. 243 approving the same, entered June 29, 1937.

15. Petition for approval of Improvement Budget for the year 1938, filed March 4, 1938.

16. Order No. 347 approving Improvement Budget for the year 1938, entered March 4, 1938.

17. Petition for approval of Improvement Budget for the year 1939, filed February 21, 1939.

18. Order No. 460 approving Improvement Budget for the year 1939, entered February 21, 1939.

19. Petition for approval of Improvement Budget for the year 1940, filed March 1, 1940.

20. Order No. 633 approving Improvement Budget for the year 1940, entered March 1, 1940.

21. Petition of Trustees for authority to apply for certificate of public convenience and necessity to abandon approximately 52 miles of railroad, filed July 16, 1937.

22. Order No. 249 authorizing application to the Interstate Commerce Commission for certificate of public convenience and necessity to abandon approximately 52 miles of railroad, entered July 16, 1937.

23. Petition to join as parties applicant for certificate of public convenience and necessity to abandon a certain branch line in the State of North Dakota, filed January 29, 1936.

24. Order No. 73 authorizing application to the Interstate Commerce Commission to join as parties applicant in I. C. C. Docket No. 19842, relative to abandonment of branch line of railroad in Sargent County, North Dakota, entered January 29, 1936.

25. Petition for authority to make application for certificates of public convenience and necessity to abandon certain branch lines in the State of South Dakota, filed January 29, 1936.

26. Order No. 74 authorizing applications for cer-300 tificates of public convenience and necessity to abandon certain branch lines in the State of South Dakota, entered January 29, 1936.

27. Petition for authority respecting coordination with Chicago Great Western Railroad Company and to make application to Interstate Commerce Commission to abandon 14.11 miles of railroad line in Minnesota, filed December 3, 1936.

28. Order authorizing coordination with Chicago Great Western Railroad Company and application to Interstate Commerce Commission to abandon 14.11 miles of railroad line in Minnesota, entered December 3, 1936.

29. Petition for authority to make application to Interstate Commerce Commission for certificate of public convenience and necessity authorizing abandonment of 58 miles of branch line railroad in Iowa, filed January 12, 1937.

30. Order authorizing application to Interstate Commerce Commission for certificate of public convenience and necessity for abandonment of 58 miles of branch line railroad in Iowa, entered January 12, 1937.

31. Petition of Trustees for authority to apply to the Interstate Commerce Commission for a certificate of public convenience and necessity authorizing abandonment of approximately 8.9 miles of branch line railroad between Menno and Scotland, in Hutchinson and Bon Homme Counties, South Dakota, and for authority to abandon upon the granting of such certificate, filed February 25, 1938.

32. Order No. 345 authorizing application to the Interstate Commerce Commission for certificate of public convenience and necessity authorizing abandonment of approximately 8.9 miles of branch line railroad between Menno and Scotland, in Hutchinson and Bon Homme Counties, South Dakota, entered February 25, 1938.

301 33. Petition for authority to apply to Interstate Commerce Commission for certificate of public conveni-

ence and necessity authorizing abandonment of approximately 35 miles and 17 miles of branch line railroad in the State of Iowa, filed July 28, 1939.

34. Order No. 533 authorizing application to Interstate Commerce Commission for certificate of public convenience and necessity authorizing abandonment of 35 miles and 17 miles of branch line railroad in the State of Iowa.

35. Petition for approval of adoption of agreement made May 21, 1936 between railroad managements and railroad labor organizations regarding dismissal wage payments, filed September 10, 1936.

36. Order No. 133 approving adoption of agreement regarding dismissal wage payments, entered September 10, 1936.

37. Petition for approval of wage increase agreement of October 3, 1937, filed October 21, 1937.

38. Order No. 295 approving wage increase agreement of October 3, 1937, entered October 22, 1937.

39. Petition for approval of wage increase agreement of August 5, 1937, filed August 24, 1937.

40. Order No. 263 approving wage increase agreement of August 5, 1937, entered August 24, 1937.

41. All General Balance Sheets and Monthly Income Accounts filed herein for each month for the period beginning July 1, 1935, and ending September 4, 1940.

42. Order entered April 3, 1936, authorizing Trustee to execute agreements for the creation of Equipment Trust, Series "O," and to issue and sell Equipment Trust Certificates.

43. Order entered December 28, 1936, authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul, and Pacific Railroad Equipment Trust Certificates, Series "P".

44. Order entered March 12, 1937, authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul and 302 Pacific Railroad Equipment Trust Certificates, Series "Q".

45. Order entered August 31, 1937, authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "R".

46. Order entered March 28, 1938, authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "S".

47. Order entered May 3, 1939, authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "T".

48. Order entered December 5, 1939, authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "U".

49. Petition for authority to apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of operation over 63.5 miles of railroad in Michigan, filed November 19, 1935.

50. Order No. 41 authorizing application to Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of operation over 63.5 miles of railroad in Michigan, dated November 19, 1935.

51. Petition for authority to apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 14.23 miles of railroad in Washington, filed November 30, 1936.

52. Order No. 167 authorizing application to Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 14.23 miles of railroad in Washington, dated November 30, 1936.

53. Petition for authority to apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 0.97 miles and 14.97 miles of railroad in Montana, filed January 12, 1937.

303 54. Order No. 187 authorizing application to Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 0.97 miles and 14.97 miles of railroad in Montana, dated January 12, 1937.

55. Petition for authority to apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 3.1 miles of railroad in Iowa, filed March 26, 1937.

56. Order No. 219 authorizing application to Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 3.1 miles of railroad in Iowa, dated March 26, 1937.

57. Petition for authority to apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 2.01 miles of railroad in Washington, filed March 26, 1937.

58. Order No. 220 authorizing application to Interstate Commerce Commission for Certificate of Public Conveni-

ence and Necessity authorizing abandonment of 2.01 miles of railroad in Washington, dated March 26, 1937.

59. Petition for authority to apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of approximately 1.5 miles of railroad in Wisconsin, filed June 13, 1939.

60. Order No. 510 authorizing application to Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of approximately 1.5 miles of railroad in Wisconsin, dated June 13, 1939.

61. Petition for authority to apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 5.19 miles of railroad in Indiana, filed September 25, 1939.

62. Order No. 550 authorizing application to Interstate Commerce Commission for Certificate of Public Con-
304 venience and Necessity authorizing abandonment of 5.19 miles of railroad in Indiana, dated September 25, 1939.

63. Petition for authority to apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 29.60 miles of railroad in South Dakota, filed November 22, 1940.

64. Order No. 758 authorizing application to Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 29.60 miles of railroad in South Dakota, dated November 22, 1940.

65. Order No. 82B entered March 7, 1936, authorizing Trustees to join with Chicago Union Station Company and its other proprietary owners in a plan of refinancing certain outstanding bonds of Chicago Union Station Company.

66. Order No. 125B entered August 5, 1936, authorizing Trustees to join with Chicago Union Station Company and its other proprietary owners in a plan of refinancing certain outstanding bonds of Chicago Union Station Company.

67. Order No. 634 entered March 15, 1940, authorizing Trustees to join with Chicago Union Station Company and its other proprietary owners in a plan of refinancing certain outstanding bonds of Chicago Union Station Company.

68. This designation of additional portions of the record on appeal, together with proof of service thereof.

You are requested to certify the foregoing additional portions of the record to the United States Circuit Court of

Appeals for the Seventh Circuit within the time allowed by law.

Kenneth F. Burgess,
Douglas F. Smith,
George Ragland, Jr.,
Attorneys for Group of Institutional Investors, Holders of Securities of the Debtor.

Sidley, McPherson, Austin & Burgess,
Counsel for Group of Institutional Investors, Holders of Securities of the Debtor.

123 And on, to wit, the 24th day of January, A. D. 1941, came the Guaranty Trust Company by its attorneys and filed in the Clerk's office of said Court its certain Designation of Additional Contents of Record in words and figures following, to wit: Filed Jan. 24, 1941.

124 In the District Court of the United States.

(Caption—60463)

DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE INCLUDED IN THE RECORD ON APPEAL.

To the Clerk of said Court:

You are hereby requested, pursuant to Rule 75 of the Rules of Civil Procedure for the District Courts of the United States, to include in the record on appeal from the Order and Decree Approving Modified Plan of Reorganization in the above entitled proceeding, notice of which appeal has been filed by the Debtor, the following additional portions of the record, proceedings and evidence in addition to the portions designated by the Debtor, as Appellant, in its Amended Designation of Contents of Debtor's Record on Appeal, heretofore filed herein:

1. Petition of Fifty Year Mortgage Trustees for order granting leave to intervene, filed August 26, 1935.

2. Order No. 18, Allowing Fifty Year Mortgage Trustees to file petition of intervention, entered August 26, 1935.

3. Petition of Fifty Year Mortgage Trustees for intervention and for impounding of income.

125 4. Order No. 18A, granting Fifty Year Mortgage Trustees leave to intervene, entered August 26, 1935.

5. Order No. 22, extending time for filing claims.

6. Verified statement made by Guaranty Trust Company of New York, as Corporate Trustee, pursuant to the provisions of sub-division (a) of paragraph Second of Order No. 2.

7. Exhibits 27, 34, 35 and 36 introduced at the hearing before the Court in September of 1940.

8. Notice of appeal of Fifty Year Mortgage Trustees filed December 13, 1940, together with proof of service.

9. Bond on appeal filed by Fifty Year Mortgage Trustees.

10. Statement of points on appeal of Fifty Year Mortgage Trustees filed December 16, 1940, together with proof of service.

11. This additional designation of record, together with proof of service.

12. Intervention petition of Fifty Year Mortgage Trustees dated August 5, 1935 in proceeding before Interstate Commerce Commission.

13. Petition and memorandum of Fifty Year Mortgage Trustees dated April 11, 1940 for modification of report and order of the Commission decided February 12, 1940.

You are requested to certify the foregoing additional portions of the record to the United States Circuit Court
126 of Appeals for the Seventh Circuit within the time allowed by law.

Davis, Polk, Wardwell, Gardiner & Reed,
By Thomas O'G. FitzGibbon,
Thomas O'G. FitzGibbon,
a member of said firm.
15 Broad Street,
New York, N. Y.

Tenney, Harding, Sherman & Rogers,
By Henry F. Tenney,
Henry F. Tenney,
a member of said firm.
120 South LaSalle Street
Chicago, Illinois

Attorneys for Guaranty Trust Company of New York and Merrel P. Callaway, as Trustees under Mortgage and Deed of Trust of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, dated as of February 2, 1925.

267 And on, to wit, the 27th day of January, A. D. 1941 came the Fifty Year Mortgage Trustees by their attorneys and filed in the Clerk's office of said Court their certain Amended Designation of Contents of Record on Appeal in words and figures following, to wit: Filed Jan. 27, 1941.

268 IN THE DISTRICT COURT OF THE UNITED STATES,

* * * (Caption—60463) * * *

AMENDED DESIGNATION OF CONTENTS OF RECORD ON APPEAL OF FIFTY YEAR MORTGAGE TRUSTEES FROM ORDER APPROVING PLAN OF REORGANIZATION.

To the Honorable Hoyt King: Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division:

You are hereby requested, pursuant to Rule 75(a) of the Rules of Civil Procedure for the District Courts of the United States, to include in the record on appeal of Guaranty Trust Company of New York and Merrel P. Callaway as Trustees under the Mortgage and Deed of Trust of Chicago, Milwaukee, St. Paul and Pacific Railroad Company dated as of February 2, 1925, the following:

1. Debtor's petition for Order No. 1 and Exhibit A attached thereto, filed June 29, 1935.

2. Order No. 1, approving petition as properly filed, entered June 29, 1935.

3. Order No. 2, fixing date for filing claims and dividing claims into classes, entered July 6, 1935.

4. Petition of Fifty Year Mortgage Trustees for order granting leave to intervene.

5. Order No. 18.

6. Petition of Fifty Year Mortgage Trustees for intervention and for impounding of income.

7. Order No. 18A.

8. Order No. 22, extending time for filing claims.

269 9. Verified statement made by Guaranty Trust Company of New York, as Corporate Trustee, pursuant to the provisions of sub-division (a) of paragraph Second of Order No. 2.

10. Report of the Interstate Commerce Commission in Finance Docket No. 10882, issued February 12, 1940, filed February 29, 1940.

11. Supplemental report of Interstate Commerce Commission in Finance Docket No. 10882, issued June 4, 1940, filed June 14, 1940.

12. Supplemental order of Interstate Commerce Commission in Finance Docket No. 10882, issued June 4, 1940, filed June 14, 1940.

13. Order No. 680, fixing time within which objections to the plan may be filed, entered June 21, 1940.

14. Objections and claims for equitable treatment of Fifty Year Mortgage Trustees, filed August 1, 1940.

15. Exhibits 27, 34, 35 and 36 introduced at the hearing before the Court in September of 1940.

16. Memorandum of Judge Igoe approving the plan as certified by the Commission, filed October 21, 1940.

17. Objections and memorandum of Fifty Year Mortgage Trustees to proposed findings of fact, conclusions of law, order and decree, filed November 12, 1940.

18. Findings of fact, conclusions of law, order and decree approving plan of reorganization, entered by the Court on November 13, 1940.

270 19. Proof of notice given parties of entry of decree, filed November 18, 1940.

20. Notice of appeal of Fifty Year Mortgage Trustees filed December 13, 1940, together with proof of service.

21. Bond on appeal filed by Fifty Year Mortgage Trustees.

22. Statement of points on appeal of Fifty Year Mortgage Trustees filed December 16, 1940, together with proof of service.

23. This amended designaton of record, together with proof of service.

24. The following pages of the stenographic minutes of the testimony before the Interstate Commerce Commission in the record certified by the Commission to the Court: 15-25, 30-2, 37-8, 383-5, 468, 517, 538, 573-4, 600-8, 642-3, 676-8, 694-8, 700-2, 712-3, 760-73, 778, 781, 794-6, 804, 818-21, 827, 925, 935-8, 986, 1037-40, 1044, 1057-69, 1082, 1103-12, 1128, 1132-5, 1151-9, 1167-73, 1270-1, 1281-5, 1299-1307, 1341-1410, 1421, 1431-5, 1441-2, 1446, 1466-80, 1518-29, 1535-1608, 1611-14, 1629-32, 1652-3, 1657-60 and 1664.

25. The following exhibits in the record certified by the Commission to the Court: 2, 27 (Mortgage and Deed of Trust dated as of February 2, 1925 of Debtor to Guaranty Trust Company of New York and Merrel P. Callaway as Trustees. The parts of said mortgage essential to the de-

cision of the questions preesnted by this appeal and hereby designated to be certified and included in the record are as follows: Beginning on page 20 of the printed copy thereof, with the words "Now, Therefore, This Indenture Witnesseth", through the Granting Clauses, and to
271 Article One on page 54), 73, 76, 77, 91, 93, 96, 120, 139, 141, 143, 145, 146, 149, 150, 173, 175, 177, 179, 181, 188, 189, 204, 215, 216, 217 and 218.

26. Report of Bureau of Valuaton of Interstate Commerce Commission as of December 31, 1935, pages 2 (table of mileage statistics for Debtor), 3 and 4 (table of elements of value for Debtor, with notes) and 9 (elements of value and mileage for Fifty Year Mortgage).

27. Intervention petition of Fifty Year Mortgage Trustees dated August 5, 1935 in proceeding before Interstate Commerce Commission.

28. Pétiton and memorandum of Fifty Year Mortgage Trustees dated April 11, 1940 for modification of report and order of the Commission decided February 12, 1940.

Dated: January 24, 1941.

Davis Polk Wardwell Gardiner & Reed,
By Thomas O'G. FitzGibbon,
Thomas O'G. FitzGibbon,
a member of said firm,
15 Broad Street,
New York, N. Y.

Tenney, Harding, Sherman & Rogers,
By Henry F. Tenney,
Henry F. Tenney,
a member of said firm,
120 South LaSalle Street,
Chicago, Illinos.

Solicitors for Guaranty Trust Company of New York and Merrel P. Callaway as Fifty Year Mortgage Trustees.

311 And on, to wit, the 29th day of January, A. D. 1941 came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Designation of Additional Portions of the Record, Proceedings and Evidence to Be Included in the Record on Appeal in words and figures following, to wit:

Filed Jan. 29, 1941.

312 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Capton—60463) * *

DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE INCLUDED IN THE RECORD ON APPEAL.

To the Clerk of Said Court:

You are hereby requested, pursuant to Rule 75 of the Rules of Civil Procedure for the District Courts of the United States, to include in the record on appeal from the Order and Decree Approving Modified Plan of Reorganization in the above entitled proceeding, notice of which appeal has been filed on behalf of the Protective Com... tee for the Holders of Fifty-Year 5% Mortgage Bonds due February 1, 1975, Appellants, the following additional portions of the record, proceedings and evidence in addition to the portions designated by said Appellants in their Designation of Contents of the Record on Appeal, heretofore filed herein:

1. The Reporters' Transcript of Testimony given before the Interstate Commerce Commisson at all hearings had upon or with reference to a Plan or Plans of Reorganization, being pages 1 to 1666, both inclusive, of said Reporters' Transcript. This designation includes the portion of said Transcript designated by said Appellants in Paragraph 33 of their Designation, it being intended hereby to request, in addition to the material so designated by them, all testimony given and proceedings had as set forth in pages 1 to 1666, both inclusive of said Transcript.

313 2. All Exhibits introduced in evidence at all hearings had upon or with reference to a Plan or Plans of Reorganization before the Interstate Commerce Commission, being Exhibits numbered 1 to 219, both inclusive. This designation includes the exhibits listed in Paragraph 34 of the Designation of said Appellants, it being intended hereby to request, in addition to the Exhibits so designated by them, all additional Exhibits introduced at said hearings.

3. All of the testimony given, all of the proceedings had and all of the Exhibits introduced at the hearing on the Modified Plan before the District Court September 4th,

1940, to September 13th, 1940, both inclusive, except the Oral Arguments of Counsel, the parts so designated being pages 1 to 609, both inclusive, of the Reporters' Transcript of said hearing, together with all of the Exhibits introduced at said hearing. This designation includes the Exhibits designated by said Appellants in Paragraph 20 of their Designation, it being intended hereby to request, in addition to the Exhibits so designated by them, all additional Exhibits introduced and all testimony given and proceedings had at said hearing, other than the Oral Arguments of Counsel.

4. The material designated in behalf of the Trustees of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Appellees, in Paragraphs 1 to 3, both inclusive, 6 to 20, both inclusive, and 22 to 35, both inclusive, and 37 to 39, both inclusive, respectively, of their Designation of Additional Portions of the Record, Proceedings and Evidence to be Included in the Record on Appeal, heretofore filed herein in behalf of said Trustees in connection with the Appeal of Chicago, Terre Haute & Southeastern Railway Company Income Mortgage Bondholders' Committee, et al., Appellants, and said Designations are incorporated herein by reference and are to be considered to the same extent and with the same force and effect as if set out in full herein.

5. The material designated in behalf of the Trustees of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Appellees, in Paragraphs 1, 2, and 22 to 59, both inclusive, respectively, of their Designation of Additional Portions of the Record, Proceedings and Evidence to be Included in the Record on Appeal heretofore filed herein in behalf of said Trustees in connection with the Appeal of the Trustees of Princeton University and others, constituting a Group of General Mortgage Bondholders of Chicago, Milwaukee & St. Paul Railway Company known as the "University Group," and the United States Trust Company of New York, as Trustee of said General Mortgage, Appellants, and said Designations are incorporated herein by reference and are to be considered to the same extent and with the same force and effect as if set out in full herein.

6. The material designated in behalf of the Trustees of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Appellees, in Paragraphs 4 to 29,

both inclusive, respectively, of their Designation of Additional Portions of the Record, Proceedings and Evidence to be Included in the Record on Appeal in Addition to the Portions Designated by the Debtor as Appellant in its Amended Designation of the Contents of Debtor's Record on Appeal, said Designation of additional portions in behalf of said Trustees having been heretofore filed and said numbered Designations are incorporated herein by reference and are to be considered to the same extent and with the same force and effect as if set out in full herein.

314 7. This Designation of additional portions of the record on appeal, together with Proof of Service thereof.

You are requested to certify the foregoing additional portions of the record to the United States Circuit Court of Appeals for the Seventh Circuit within the time allowed by law.

A. N. Whitlock and C. S. Jefferson,
Attorneys for Henry A. Scandrett, Walter J. Cummngs, and George I. Haight, Trustees of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Appellees.
88 Union Station Building,
Chicago, Illinois.

305 And on, to wit, the 29th day of January, A. D. 1941, came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Designation of Additional Portions of the Record, Proceedings and Evidence to be included in the record on appeal in words and figures following, to wit:

306 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Jan. 29, 1941.

(Caption—60364)

DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE INCLUDED IN THE RECORD ON APPEAL.

To the Clerk of Said Court:

You are hereby requested, pursuant to Rule 75 of the Rules of Civil Procedure for the District Courts of the United States, to include in the record on appeal from the Order and Decree Approving Modified Plan of Reorganization in the above entitled proceeding, notice of which appeal has heretofore been filed on behalf of the Debtor, the following additional portions of the record, proceedings and evidence in addition to the portions designated by the Debtor, as Appellant, in its Amended Designation of Contents of Debtor's Record on Appeal, heretofore filed herein:

1. All exhibits introduced in evidence at the hearing before the District Court on September 4th to 13th, inclusive, 1940. This designation includes the exhibits listed in paragraph No 54 of Debtor's Amended Designation, it being intended hereby to request, in addition to the exhibits so designated, all additional exhibits introduced at said hearing.

2. The material designated in behalf of the Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Appellees, in paragraphs numbered 22, 27 to 33, both inclusive, 38 and 39, respectively, of their

307 Designation of Additional Portions of the Record, Proceedings and Evidence to be included in the Record on Appeal, heretofore filed herein in behalf of said Trustees in connection with the appeal of Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bondholders' Committee, et al, Appellants, and said designations are incorporated herein by reference and are to be considered to the same extent and with the same force and effect as if set out in full herein.

3. The material designated in behalf of the Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Appellees, in paragraphs numbered 30 to 59, both inclusive, respectively, of their Designation of Additional Portions of the Record, Proceedings and Evi-

dence to be Included in the Record on Appeal, heretofore filed herein in behalf of said Trustees in connection with the appeal of the Trustees of Princeton University and others, constituting a group of General Mortgage bondholders of the Chicago, Milwaukee & St. Paul Railway Company, known as the "University Group," and United States Trust Company of New York, as Trustee of said General Mortgage, Appellants, and said designations are incorporated herein by reference and are to be considered to the same extent and with the same force and effect as if set out in full herein.

4. Order entered April 3, 1936, authorizing Trustees to execute agreements for the creation of Equipment Trust, Series "O," and to issue and sell Equipment Trust Certificates.

5. Order entered December 28, 1936, authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "P."

6. Order entered March 12, 1937, authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "Q."

7. Order entered August 31, 1937, authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "R."

308 8. Order entered March 28, 1938, authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "S."

9. Order entered May 3, 1939, authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "T."

10. Order entered December 5, 1939, authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "U."

11. Petition for authority to apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of operation over 63.5 miles of railroad in Michigan, filed November 19, 1935.

12. Order No. 41 authorizing application to Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of operation over 63.5 miles of railroad in Michigan, dated November 19, 1935.

13. Petition for authority to apply to the Interstate

Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 14.23 miles of railroad in Washington, filed November 30, 1936.

14. Order No. 167 authorizing application to Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 14.23 miles of railroad in Washington, dated November 30, 1936.

15. Petition for authority to apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 0.97 miles and 14.97 miles of railroad in Montana, filed January 12, 1937.

16. Order No. 187 authorizing application to Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 0.97 miles and 14.97 miles of railroad in Montana, dated January 12, 1937.

309 17. Petition for authority to apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 3.1 miles of railroad in Iowa, filed March 26, 1937.

18. Order No. 219 authorizing application to Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 3.1 miles of railroad in Iowa, dated March 26, 1937.

19. Petition for authority to apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 2.01 miles of railroad in Washington, filed March 26, 1937.

20. Order No. 220 authorizing application to Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 2.01 miles of railroad in Washington, dated March 26, 1937.

21. Petition for authority to apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of approximately 1.5 miles of railroad in Wisconsin, filed June 13, 1939.

22. Order No. 510 authorizing application to Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of approximately 1.5 miles of railroad in Wisconsin, dated June 13, 1939.

23. Petition for authority to apply to the Interstate

Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 5.19 miles of railroad in Indiana, filed September 25, 1939.

24. Order No. 550 authorizing application to Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 5.19 miles of railroad in Indiana, dated September 25, 1939.

310 25. Petition for authority to apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 29.60 miles of railroad in South Dakota, filed November 22, 1940.

26. Order No. 758 authorizing application to Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing abandonment of 29.60 miles of railroad in South Dakota, dated November 22, 1940.

27. Order No. 82B entered March 7, 1936, authorizing Trustees to join with Chicago Union Station Company and its other proprietary owners in a plan of refinancing certain outstanding bonds of Chicago Union Station Company.

28. Order No. 125B entered August 5, 1936, authorizing Trustees to join with Chicago Union Station Company and its other proprietary owners in a plan of refinancing certain outstanding bonds of Chicago Union Station Company.

29. Order No. 634 entered March 15, 1940, authorizing Trustees to join with Chicago Union Station Company and its other proprietary owners in a plan of refinancing certain outstanding bonds of Chicago Union Station Company.

30. This designation of additional portions of the record on appeal, together with proof of service thereof.

You are requested to certify the foregoing additional portions of the record to the United States Circuit Court of Appeals for the Seventh Circuit within the time allowed by law.

A. N. Whitlock and C. S. Jefferson,
Attorneys for Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Appellees.
888 Union Station Building,
Chicago, Illinois.

212 IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—60463)

DESIGNATION OF RECORD ON APPEAL.

To the Clerk of the Said District Court:

You Are Hereby Requested to prepare the record in connection with the Notice of Appeal filed on December 13, 1940, by Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bondholders' Committee, et al., which record is to consist of the following:

1. Petition of Debtor for reorganization under Section 77, with Exhibit A attached—filed June 29, 1935.

2. Order entered June 29, 1935, approving Debtor's petition as having been properly filed.

3. Petition of Debtor reciting claims and interests of creditors and shareholders—filed July 6, 1935.

4. Order entered July 6, 1935, respecting filing and classification of claims.

5. Petition of Debtor respecting payment of rental obligations under Terre Haute Lease—filed August 5, 1935.

6. Order entered August 27, 1935, authorizing payment of rental obligations under Terre Haute Lease.

213 7. Order entered October 17, 1935, appointing Trustees of property of the Debtor.

8. Petition of Debtor for an extension of time within which to elect whether to adopt or disaffirm contracts—filed December 16, 1935.

9. Order entered December 16, 1935, extending time within which to elect whether to adopt or disaffirm contracts.

10. Order entered June 16, 1936, extending time within which to elect whether to adopt or disaffirm contracts.

11. Trustees' report pursuant to Section C 9—filed November 2, 1936.

12. Order entered December 12, 1936, extending time within which to elect whether to adopt or disaffirm contracts.

13. Order entered July 7, 1937, extending time within which to elect whether to adopt or disaffirm contracts.

14. Order entered January 21, 1938, extending time within which to elect whether to adopt or disaffirm contracts.

15. Order entered July 15, 1938, extending time within which to elect whether to adopt or disaffirm contracts.

214 16. Order entered January 12, 1939, extending time within which to elect whether to adopt or disaffirm contracts.

17. Order entered July 20, 1939, extending time within which to elect whether to adopt or disaffirm contracts.

18. Order entered January 23, 1940, extending time within which to elect whether to adopt or disaffirm contracts.

19. Report of Interstate Commerce Commission, dated February 12, 1940, supplemental report of the Interstate Commerce Commission dated June 4, 1940, supplemental order of the Interstate Commerce Commission dated June 4, 1940, together with all other documents, records and evidence including transcript of stenographer's notes of various hearings and exhibits, all of which were certified to said District Court with the order of June 4, 1940.

20. Order entered June 21, 1940, setting cause for hearing on objections to Plan.

21. Order entered July 16, 1940, extending time within which to elect whether to adopt or disaffirm contracts.

22. Order entered July 31, 1940, granting leave to Terre Haute First Lien Bondholders Committee to intervene specially.

215 23. Objections of Terre Haute First Lien Bondholders' Committee to Plan—filed July 31, 1940.

24. Order entered August 1, 1940, granting leave to Girard Trust Company, as substituted trustee, to intervene specially.

25. Objections of Chicago, Terre Haute and Southeastern Railway Company to Plan—filed July 31, 1940.

26. Objections of Girard Trust Company to Plan—filed August 1, 1940.

27. Joint and several objections of Massachusetts Mutual Life Insurance Company, et al., to Plan—filed August 1, 1940.

28. Objections of First National Bank of Chicago, as Trustee, to Plan—filed August 1, 1940.

29. Suggestions of Mercantile National Bank of Chicago and Benjamin H. Rubenzik, as trustees, to Plan—filed August 1, 1940.

30. Objections of Terre Haute Income Mortgage Bondholders' Committee to Plan—filed August 1, 1940.

31. Objections of Continental Illinois National Bank and Trust Company of Chicago, as Trustee, to Plan—filed August 1, 1940.

32. Order entered September 4, 1940, granting leave to

Massachusetts Mutual Life Insurance Company, et al., to intervene.

216 33. Order entered September 9, 1940, granting Terre Haute Income Mortgage Bondholders' Committee leave to intervene.

34. Memorandum of Opinion of Honorable Michael L. Igoe, United States District Judge—filed October 21, 1940.

35. Order entered November 6, 1940, granting leave to Terre Haute Income Mortgage Bondholders' Committee to file amended objections.

36. Amended objections of Terre Haute Income Mortgage Bondholders' Committee to Plan—filed November 6, 1940.

37. Objections of Terre Haute First Lien Bondholders' Committee to Proposed Findings of Fact—filed November 12, 1940.

38. Findings of Fact, Conclusions of Law, and Order and Decree approving Plan of Reorganization for Debtor —entered November 13, 1940.

39. Proof of Notice given to parties of aforesaid decree —filed November 14, 1940.

40. Reporter's transcript of testimony of Henry A. Scandrett and J. W. Severs given at hearing on Plan before the said District Court September 4, 1940, to September 13, 1940, both inclusive, with accompanying exhibits numbered 15 to 25, both inclusive.

41. Notice of Appeal.

217 42. Statement of Points on Appeal.

43. Designation of record on appeal.

44. Proof of service of statement of points and designation of record on appeal.

You Are Hereby Requested to certify the aforesaid record to the United States Circuit Court of Appeals for the Seventh Circuit within the time allowed by law.

Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bondholders' Committee,
By West & Eckhart,
William A. McSwain,
Its Attorneys.

Mercantile National Bank of Chicago and Benjamin H. Rubenzik, Trustees Under the Indenture of Trust of the Bedford Belt Railway Company Dated June 1, 1898,
By Gann, Secord, Stead & McIntosh,
Their Attorneys.

Chicago, Terre Haute and Southeastern Railway Company First Lien Bondholders Committee,
By Hunt, Hill & Betts,
Bell, Boyd & Marshall,
Its Attorneys.

Girard Trust Company, Substituted Trustee Under Deed of Trust Dated February 1, 1901, of the Southern Indiana Railway Company, and Trustee Under Supplemental Mortgage Dated November 30, 1910, of Chicago, Terre Haute and Southeastern Railway Company,
By Bell, Boyd & Marshall,
Barnes, Myers & Price,
Its Attorneys.

218 Massachusetts Mutual Life Insurance Company and the Prudential Insurance Company of America,
By E. S. Ballard,
Minier Sargent,
Its Attorneys.

Chicago, Terre Haute and Southeastern Railway Company,
By W. F. Peter,
Its Attorney.

The First National Bank of Chicago, as Trustee Under an Indenture Dated December 1, 1910, Between Chicago, Terre Haute and Southeastern Railway Company and First Trust and Savings Bank and Louis Boisot, Trustee,
By Cassels, Potter & Bentley,
Its Attorneys.

Continental Illinois National Bank and Trust Company of Chicago, as Trustee Under Trust Indenture Dated December 1, 1910, Between Chicago, Terre Haute and Southeastern Railway Company and Illinois Trust and Savings Bank and William H. Henkle, Trustees,
By Mayer, Meyer, Austrian & Platt,
Its Attorneys,
Appellants.

284 And afterwards, to wit, on the 14th day of January, A. D. 1941, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit: Filed Jan. 14, 1941.

285 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

ORDER GRANTING LEAVE TO DEBTOR TO FILE AMENDED DESIGNATION.

This cause coming on to be heard upon motion of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, for entry of an order granting leave to the Debtor to file an amended designation of record herein, and striking the former designation of record filed by the Debtor, due notice having been given to all parties and the Court being fully advised in the premises:

It Is Hereby Ordered, Adjudged and Decreed that leave be and the same is hereby given to Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, to file instanter an Amended Designation of Contents of Record on Appeal in the appeal taken by the Debtor, and within ten days from this date any other party to the appeal taken by the Debtor may serve and file a designation of additional portions of the record, proceedings, and evidence to be included in said Record on Appeal in the appeal taken by the Debtor, such designation of additional portions to be filed not later than January 24, 1941.

It Is Further Ordered, Adjudged and Decreed that the original Designation of Contents of Record on Appeal filed by the Debtor on December 18, 1940, is hereby striken from the record.

Dated this 14th day of January, 1941.

Enter:

Michael L. Igoe,
Judge.

Entered Jan. 27, 1941.

264 And afterwards, to wit, on the 27th day of January, A. D. 1941, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

265 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER GRANTING LEAVE TO FIFTY YEAR MORTGAGE TRUSTEES TO FILE AMENDED DESIGNATION.

This cause coming on to be heard upon motion of Guaranty Trust Company of New York and Merrel P. Callaway as Trustees under the Mortgage and Deed of Trust of Chicago, Milwaukee, St. Paul and Pacific Railroad Company dated as of February 2, 1925 for entry of an order granting leave to the Fifty Year Mortgage Trustees to file an amended designation of record herein, and striking the former designation of additional portions of the record, filed by the Fifty Year Mortgage Trustees on December 26, 1940, due notice having been given to all parties and the Court being fully advised in the premises:

It Is Hereby Ordered, Adjudged and Decreed that leave be and the same is hereby given to the Fifty Year Mortgage Trustees to file instanter an amended designation of contents of record on appeal taken by the Fifty Year Mortgage Trustees, and within one week from this date any other party to the appeal taken by the Fifty Year Mortgage Trustees may serve and file a designation of additional portions of the record, proceedings, and evidence to be
266 included in said record on appeal in the appeal taken by the Fifty Year Mortgage Trustees, such designation of additional portions to be filed not later than 7 days from the date hereof.

It Is Further Ordered, Adjudged and Decreed that said former designation of additional portions of the record on appeal filed by the Fifty Year Mortgage Trustees on December 26, 1940, is hereby stricken from the record.

Dated this day of January, 1941.

Enter:

Igoe,
Judge.

339 And afterwards, to wit, on the 5th day of March, A. D. 1941, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

340 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

ORDER.

These proceedings coming on to be heard in open court upon due notice to all parties in interest and continued to this day without further notice.

On motion of Guggenheimer & Unterinyer and Sabath, Perlman, Goodman & Rein, attorneys for Anglo-Continentale Treuhand, A. G., intervenor, for leave to withdraw its notice of appeal and statement of points heretofore filed herein, and the court having heard the arguments and statements of counsel and for good cause shown, and the court being fully advised in the premises,

It Is Hereby Ordered that leave be and the same is hereby granted said Anglo-Continentale Treuhand, A. G. to withdraw the notice of appeal and statement of points heretofore filed herein on its behalf, and the clerk of this court be and he is hereby ordered and directed not to include said notice of appeal and statement of points of Anglo-Continentale Treuhand, A. G. in the record to be certified to the United States Circuit Court of Appeals for the Seventh Circuit.

It Is Further Ordered that the designation of record filed by Anglo-Continentale Treuhand, A. G. remain as filed without cost to said Anglo-Continentale Treuhand, A G.

Enter:

Igoe (Signed)

United States District Judge.

Dated at Chicago, Illinois this 5th day of March, 1941.

281 And afterwards, to wit, on the 8th day of January, A. D. 1941, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

282 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

ORDER EXTENDING TIME FOR FILING RECORD ON APPEAL AND DOCKETING ACTIONS, AND ALLOWING USE OF ORIGINALS IN PREPARATION OF RECORD ON APPEAL.

This cause coming on to be heard upon motion of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, for entry of an order under the provisions of Rule 73, subparagraph (g), of the Rules of Civil Procedure for the District Court of the United States, extending the time for filing the Record on Appeal and docketing the actions hereinafter mentioned, and for entry of a further order providing that certain originals be used by the Clerk of the District Court in the preparation of the Record on Appeal from the order of November 13, 1940, approving the plan of reorganization, due notice having been given to all parties and the Court being fully advised in the premises:

It Is Hereby Ordered, Adjudged and Decreed that the time for filing the Record on Appeal and docketing the actions in all appeals taken by the Debtor, Guaranty Trust Company of New York and Merrel P. Callaway, as Trustees, E. Stanley Glines, Morton H. Fry, W. Rodman Peabody, R. Harland Shaw and C. Oliver Wellington, as a Protective Committee for Holders of Debtor's Fifty Year 5% Mortgage Gold Bonds, Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bondholders' Committee, Mercantile National Bank of Chicago and Benjamin H. Rubenzik, Trustees, Chicago, Terre Haute and Southeastern Railway Company First Lien Bondholders' Committee, Girard Trust Company, substitute Trustee, Massachusetts Mutual Life Insurance Company and The Prudential Insurance Company of America, Chi-

cago, Terre Haute and Southeastern Railway Company, The First National Bank of Chicago, as Trustees, Continental Illinois National Bank and Trust Company of Chicago, as Trustee, St. Louis Union Trust Company and Illinois State Trust Company, as Trustee, and Tower Grove Bank and Trust Company, St. Louis Realty & Securities Company, and Loraine G. Franciscus, Anglo-Continentale Treuhand, A. G., Israel A. Abrams, Sol Abrams, Henrietta Chatiner and Charles J. Rosenbloom, United States Trust Company of New York, as Trustee, the Trustees of Princeton University, New York University, Robert Winthrop, as Trustee and Guardian, Edgar Palmer, as Trustee, Charles M. Wood, E. Schier Welch and George E. Brown, as Trustees, Consolidated Investment Trust, Leo Wallerstein, United States Trust Company, as Trustee for individual beneficiaries, and Beekman Winthrop, individually and as Trustee, a group of General Mortgage Bondholders of Chicago, Milwaukee and St. Paul Railway Company, known as the "University Group", and H. C. Orton, et al., as Protective Committee for the Holders of Preferred Stock of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, from the order of November 13, 1940, approving the plan of reorganization, be and the same is hereby extended to March 12, 1941, which date is 90 days from the date of the first notice of appeal filed herein on December 12, 1940.

It Is Further Ordered, Adjudged and Decreed that the original transcript of all proceedings, evidence and
283 exhibits before the Interstate Commerce Commission, including the said Commission's reports and orders approving the plan, heretofore certified and filed herein, which shall be included in the Record on Appeal, shall be sent by the Clerk of the District Court to the Clerk of the Circuit Court of Appeals for the Seventh Circuit as part of the said Record on Appeal herein, in lieu of copies thereof, the same to be returned to the Clerk of the District Court on conclusion of the appeal proceedings, and said appellants are hereby excused from filing any copies of the reporter's transcript of the evidence before the Interstate Commerce Commission.

It Is Further Ordered, Adjudged and Decreed that the originals of all pleadings filed herein having exhibits attached, and of any other pleadings, reports and exhibits in these proceedings not printed in the District Court's printed record, including all Special Master's reports, and

which pleadings, reports and exhibits shall be included in the Record on Appeal, shall be used by the Clerk of the District Court in the preparation of the said Record on Appeal from the order of November 13, 1940, approving the plan of reorganization and shall be transmitted by said Clerk of the District Court to the Circuit Court of Appeals for the Seventh Circuit as part of the transcript of record, in lieu of copies thereof, and that the same shall be returned to the Clerk of the District Court on conclusion of the appeal proceedings.

Dated this 8th day of January, 1941.

Enter:

.....

Judge.

364 Northern District of Illinois } ss:
Eastern Division }

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Designation and Amended Designations filed in this Court in the cause entitled Chicago Milwaukee St. Paul and Pacific Railway Company, No. 60463, as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 10th day of March, A. D. 1941.

Hoyt King,
Clerk.

(Seal)

Entered Mar. 22, 1941.

ORDERS ENTERED IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

And afterwards to wit on the twenty-second day of March, 1941, the following further proceedings were had:

Caption No. 7590, 7610-17.

Before Hon. Wm. M. Sparks, C. J.

On motion of counsel for appellants, it is ordered: (a) that these appeals be consolidated and heard on one record,

such consolidation being without prejudice to the right of any appellant to sever his appeal hereafter or to file separate briefs, and joinder in the petition for the entry of this order constituting no implied admission by any appellant of any liability to contribute to the cost of the printing of the record; and that action on appellants' request for an extension of time for oral argument be deferred until the main briefs are filed; (b) that the Clerk of this Court refrain from making his official estimate of the cost of the printing of the transcript of record herein until fifteen days after issuance of the report and order of the Interstate Commerce Commission upon Debtor's petition for allowance of costs of this appeal; and (c) that the stipulation as to the printing of the record on appeal and authorizing the use of certain originals for purposes on appeal be, and it is hereby, approved.

Entered Mar. 28, 1941.

And afterwards to wit on the twenty-eighth day of March, 1941, the following further proceedings were had:

Caption No. 7590, 7610-17.

Before Hon. Wm. M. Sparks, C. J.

It is ordered that the "Second Stipulation as to Use of Originals on Appeal" filed in these cases on March 27, 1941, be, and it is hereby, approved.

Entered Apr. 17, 1941.

And afterwards to wit on the seventeenth day of April, 1941, the following further proceedings were had:

Caption No. 7590, 7610-17.

Before Hon. Evan A. Evans, C. J.

It is ordered that the "Third Stipulation to Omit Certain Matters from the Printed Transcript on Appeal and as to Use of Originals" be, and it is hereby, approved.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of volume IV of the printed record, which together with volumes I, II, III and V constitutes the printed record, printed under my supervision and filed on the sixth day of June, 1941, in the following entitled causes:

Cause Nos. 7590, 7610 through 7617.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 15th day of January, A. D. 1942.

Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*